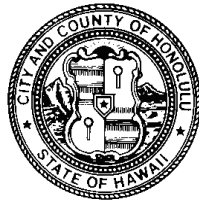


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: January 6, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson
Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Geoffrey Kam, Deputy, Department of Corporation Counsel (COR)
Nick Grube, Reported, Civil Beat
Mike Formby, Director, Department of Transportation Services (DTS)
Carolee Kubo, Director, Department of Human Resources (DHR)
Donna Leong, Corporation Counsel, COR
Diane Kawauchi, Deputy, COR
Sheryl Nicholson, First Deputy, COR
Cathy Maki, Administrative Services Officer, COR
Duane Pang, Deputy, COR
Laurie Santiago, United Public Workers (UPW)
Clifford Uwaine, United Public Workers (UPW)
Jay Parasco, City Managing Director's Office
Catherine Cruz, Reporter, & Cameraman, KITV News
Gordon Y. L. Pang, Reporter, Star-Advertiser (Entered @ 11:46 am)
Kevin Mulligan, Hawaii Government Employees Association, HGEA
(Entered @ 11:46 am)
Richard Elsner, Interested Member of the Public (Entered @ 11:58 am)

Absent: Letha A. S. DeCaires, EC Investigator
Laurie A. Wong, Associate Legal Counsel (ALC)

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 476th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at approximately 11:36 a.m. by Chair Gall. He asked the guests to introduce themselves.

The EC had before them the EDLC’s memo regarding January 6, 2014 EC meeting agenda items dated January 2, 2014.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE NOVEMBER 4, 2013 MEETING

Commissioner Chen asked that the November 18, 2013 meeting minutes be revised to clarify the speakers. Chair Gall asked that the minutes be more summarized. Chair Gall instructed that staff needs to revise the meeting minutes and resubmit them for approval.

III. OLD BUSINESS

The EC confirmed the dates and times of the February 19 and March 17, 2014 meetings at 11:30 am.

IV. NEW BUSINESS

For Discussion: Administrative News

Vice Chair Wong moved that “Administration News” be added to the agenda. Commissioner Silva seconded the Motion. The Motion was passed unanimously.

The EDLC reported that for the period July 1, 2009 through December 31, 2013, the Commission received a total of 536 complaints. Of these, 355 were investigated and closed, while 33 are still open cases. For the 355 that were investigated and closed, violations were found in 64 cases (18%), resulting in discipline being imposed in 26 (7%) of the cases. Corrective action, other than discipline, was taken by the effected agency in 141 cases (41%).

The EDLC commented that the EC website hits for FY 2014 to date were 2,559 with 798 hits on the Caldwell Transition Committee Advisory Opinion No. 2013-3.

The EDLC reported that the staff has trained approximately 3,000 employees to date for FY 2014. Staff will also include HPD in the all employee mandatory training to supplement HPD’s values-based ethics training which does not encompass the city’s standards of conduct. As such, HPD’s 2500 personnel will also be required to complete the mandatory all employee training by June 30, 2014. Staff and HPD are working together to accomplish the training.

The EDLC reported that on December 20, 2013, he attended the EC's budget meeting with the Managing Director (MD), Department of Budget and Fiscal Services (BFS) staff, and COR. The MD approved the EC's request for funds to reallocate the Investigator II position to a IV and also approved the EC's request to create and fill the Assistant EDLC position pending approval from BFS and the Department of Human Resources (DHR). The MD denied the EC's request to hire a new ALC. The MD deferred approving additional funds for expanding office space pending further discussions with the Department of Community Services.

EDLC asked whether there would be additional budget meetings. Ms. Leong replied that she was not aware of additional meetings and that the MD has taken all the proposals under advisement.

Vice Chair Wong requested the EDLC to describe the proposed expansion of the office. The EDLC replied that the expansion would include another office and expansion of the common space to accommodate a new Legal Clerk I.

The EDLC reported that he responded to COR's request for justification of an Investigator IV position by determining the complexity of cases. The statistics show that the ratio of complex to standard investigations will be about 65% to 35% in the current fiscal year.

Chair Gall asked what standard was used to determine the complexity of cases. The EDLC replied that he reviewed factors as described in his report attachment OPEN-2 including: number of witnesses, number of legal issues, number of subjects, and difficulty in obtaining evidence.

The EDLC reported that staff released an "Ethics Alert" to all agency personnel officers explaining the restrictions under the one-year cooling off period before former city officers and employees may conduct work with or before city agencies. Staff is planning to make a short presentation to all administrative services officers to discuss ethics issues.

A. For Discussion and Appropriate Action: Responses from Departments of Corporation Counsel, Human Resources and Transportation Services to Commission Staff Requests.

The EDLC summarized EC's outstanding issues with several departments. In regard to DHR, the EDLC reported that Ms. Kubo continues to insist that DHR personnel review the electronic files and decide what is "relevant" to EC investigations based on an unsupported legal basis and contrary to years of past practice. The EDLC referenced a memo from Deputy Pang, dated January 3, 2014, regarding employee privacy issues and thanked him for the additional information.

Chair Gall commented that there seems to be a communication problem in that Ms. Kubo used the term "probable cause" in her memo last month as a lay person, not as a legal term of art.

Putting the differences in terminology aside, it seems that her standard is consistent with the EC's standard. Ms. Kubo confirmed Chair Gall's statement and also stated that she was trying to help the EC avoid breaking the law.

Chair Gall asked her what her concerns were in regard to time specifications. Ms. Kubo asked that the EC provide a specific time period in order to protect employee's privacy.

Commissioner Lilly asked her about the arbitration claims she referred to during the last meeting where she alleged that the city lost an arbitration due to privacy issues. Ms. Kubo responded that she was not aware of any city cases. Commissioner Lilly asked her if she has seen any arbitrations that were overturned due to a privacy issue. She responded that she has seen advisories for other cases because she has been involved in arbitrations that privacy rights need to be balanced with proper justification for the request. Commissioner Lilly asked her who determines probable cause. Chair Gall responded that the EC determines probable cause and asked the EDLC for confirmation. The EDLC confirmed.

Ms. Leong clarified that Ms. Kubo means that the internet policy requires "proper justification" to the Directors of DHR and DIT and MD in order for access to be granted. Ms. Kubo mistakenly used the term "probable cause." Ms. Kubo needs sufficient factual information including date/time parameters. Commissioner Chen asked the EDLC if there are still outstanding requests for information that had not been provided. The EDLC stated that he believed that the requests had been approved, but we have not received the files yet.

Commissioner Lilly asked what is "proper justification"? Mr. Pang responded that "proper justification" establishing a complaint under the Ethics Commission rules of procedure such as, describing pertinent facts and circumstances, name of employees or officers involved and the nature of the act and if the EC staff determines that the facts support a violation of the standard of conduct - that information provided to the DHR director should be sufficient.

Commissioner Lilly asked what information does the EC need to provide because complaints contain sensitive information such as the identity of the complainant. For example, we believe there is sufficient justification based on a complaint we received that employee X during this time period may have engaged in political activity on city time and we want that person's emails for that period. Ms. Leong clarified that the DHR Director does not need the identity of the complainant. She then stated that the example that Mr. Lilly articulated was generally proper justification, but will be determined on a case by case basis.

Chair Gall asked for confirmation that if the EC's standard to trigger an investigation is met, then that would provide sufficient justification to request information. Ms. Leong agreed. Commissioner Lilly requested and Ms. Leong agreed that the standard would be confirmed in writing with the EDLC.

Commissioner Chen asked the EDLC if he was still concerned about the expediency of obtaining information. Commissioner Lilly added that it is important to get an expeditious response so that deleted emails will not be purged. The EDLC replied that other issues were higher priority and he does not believe expediency will be a problem.

Commissioner Silva asked Ms. Leong to resolve the contrary positions regarding employee privacy versus expectation of no privacy in the city's internet policy.

Ms. Leong explained that there is a balancing act between use of the city's property and respecting the employee's expectation of privacy which is balanced by giving gatekeepers of the information to proper justification to gain access to the information. There have been miscommunications between the EC staff and the Departments and she has tasked her staff to respond to the EC expeditiously.

Commissioner Chen requested confirmation that parties had a clear understanding of the standard now to prevent future miscommunications. The EDLC responded that the term of art to obtain information requested is "proper justification" which is in DIT's policy. The EDLC asked if, in the example described by Commissioner Lilly, DHR will review someone's email to only look for political activity emails and only provide the EC with those emails or will EC receive all the emails requested in the person's account for the specific time period. Commissioner Lilly stated that the EC should not be given emails that have been sifted through by someone else for ethics violations, and the EC needs to decide which emails violate the city's ethics laws. The EC should be able to find violations based on other emails that are used for a non-city purpose that are in plain view. Ms. Leong stated that the EC needs to provide a time and subject parameter, but it is impractical for an employee to sift through emails before giving it to the EC, but deferred the answer to Ms. Kubo.

Ms. Kubo stated that the EC needs to provide the subject of the investigation, and she will only provide the information that is related to the subject of the investigation to prevent the EC from, "witch hunting employees for any issues under the sun." Commissioner Chen asked if that meant someone else will review each email for content. Ms. Kubo agreed. Commissioner Lilly stated that the EC should review the emails to determine whether it comes under the EC's purview. Vice Chair Wong asked who determines what evidence is relevant. Chair Gall stated that the information received has to be within the scope of the complaint and that in civil litigation, the producing party makes the determination of relevance. Commissioner Lilly replied that production can sometimes come before a judge to determine relevance. The EDLC added that it is because there is an officer of the court who can determine if the information produced is responsive and relevant which is a different context here. The EDLC stated that there is a law that specifically allows the EC to find further violations based on additional evidence found during investigations.

Chair Gall asked the EDLC to provide legal authority for guidance, and asked Mr. Pang if he had researched that issue while drafting his memo to the EC. Mr. Pang stated that he

did not. Ms. Leong stated that COR would be willing to work cooperatively with EC staff to establish proper justification. Commissioner Yuen asked who makes the decision as to the expediency and priority of the response to the request. The EDLC replied that DIT Director Mark Wong told him that he would place a hold on the emails immediately after he is informed.

In regard to DTS, Mr. Formby apologized for being unable to come to the December EC meeting due to two press conferences that day. He further stated that he was unaware of any disconnect between his department and the EC until he read about it in Civil Beat after the December meeting. He stated that he replied to the EC's questions and no one informed him that the information he passed on to the EC was not sufficient. He would prefer to have a face to face meeting with the EDLC instead of emails. Mr. Formby stated that he only received one complaint about OTS which was an anonymous handwritten complaint in an unmarked envelope from the EC with no instruction. He met with the MD and thoroughly investigated the complaint. Mr. Formby showed the investigative report to the EC. He stated that DTS takes all complaints seriously and investigates them. Since he has taken office in January 2013, DTS has created a formal draft policy on how to handle complaints. Mr. Formby stated that he has only seen three versions of the same complaints. The EDLC disclosed the name and subject of the complaint in a public email which was published in a Civil Beat article. Mr. Formby stated that DTS does not do that and he would hope that the EC would also preserve the sanctity of confidential information. Mr. Formby stated that he is willing to meet with the EDLC to share with him their process and defers to COR whether EC has jurisdiction over OTS since they are not city employees. Mr. Formby stated that he doesn't know why this issue has become controversial. Since June 2013, when DTS first testified on Bill 32, he supported the DTS oversight over OTS employees in principle and now needs to determine the logistics.

The EDLC asked Director Formby's position on the ethical oversight of OTS employees. Mr. Formby replied that he would share a September draft of ethics and conflicts policy, that the OTS board first adopted. He is working on revising the policy and is willing to work with the EDLC. He took the EC laws and incorporated it to the extent that he can fairly apply it to DTS' contractual management relationship with OTS. He is drafting internal rules on how to handle a complaint regarding OTS.

The EDLC asked Mr. Formby about the specifics of the investigation of the anonymous complaint the EC provided him. Mr. Formby replied that an investigation was conducted by DTS and another investigation was conducted by OTS. He then met with the OTS Director Roger Morton to discuss the outcome of the investigations and formulated recommendations. EDLC asked if Mr. Formby would be willing to share the recommendations. Mr. Formby stated that he needed to consult with COR since the EC has no jurisdiction over OTS employees. The EDLC asked Mr. Formby if the EC should be involved in any kind of regulation of ethics at OTS. Mr. Formby stated that he doesn't have an opinion and defers to COR because it is a legal question, but he feels that everyone supports ethical behavior in the city. EDLC asked Mr. Formby between 2010 and October 2013, how many ethics complaint were received and reviewed by DTS or OTS regarding OTS. Mr. Formby responded that he only had knowledge of

complaints from January 2013 to date. He is only aware of one complaint he had mentioned before that came in three different forms. Commissioner Lilly commented that if the EC did have jurisdiction over OTS employees, then it would be beneficial to DTS because the EC would investigate case for them. Mr. Formby agreed, but again deferred to COR as the legal issue of the EC's jurisdiction.

Chair Gall advised that the rest of the discussion between the EDLC and Mr. Formby be conducted in a separate meeting outside the presence of the Commission members. The EDLC asked Mr. Formby for the January 2, 2013 DTS policy on handling ethics complaint. Mr. Formby clarified that there was no formal policy in effect at that time. Since then he has been working on an internal policy with agreement by Mr. Morton so that OTS will turn over all ethics complaints regarding OTS to DTS. The EDLC asked if Mr. Formby would have any problem sharing the draft policy with the EC. Mr. Formby replied that he would not have any problem.

- B. For Action: Request for a Motion to Confirm the Proposed FY2014 Salary for the ALC and to Approve the Requested Fiscal Year 2014 Salary for the EDLC.

Chair Gall asked Ms. Leong if the EC could use the \$10,000 salary savings from the investigator position to support the EDLC and ALC salaries for attorneys with comparable experience. EDLC stated that he was waiting for a response from DHR and COR on this matter. **Chair Gall suggested deferring the agenda item until a response is received.**

- C. For Discussion: Corporation Counsel's Response to the Commission's Amended Request Re Scope of Representation of COR in Ethics Matters, Dated September 6, 2013.

Ms. Leong stated that often times ethics issues arise in the context of other laws, and it is important to understand the context in which the ethics laws are analyzed to avoid violating other laws. COR is responsible for fully advising clients of all laws that affect them. COR has the ability to advise clients based on the EC's advisory opinions which are accessible to the deputies. Novel issues which have no precedent will be brought to the EC. Vice Chair Wong was concerned about a duplication of efforts, and mixed messages to employees. Ms. Leong stated that COR is supporting the EC staff with the heavy workload. She repeated that in regard to high stakes and novel issues COR will advise clients to contact the EC. Vice Chair Wong stated that it appeared that the cleanest way to support the EC would be to provide the EC with more resources as opposed to giving ethics advice. Ms. Leong stated that as per MD Shinn, stated at the last meeting, there are budget constraints.

Commissioner Lilly voiced concern that if COR's attorney-client privileged advice is contrary to the EC's advice, the employee who follows COR's advice could violate the ethics laws. Ms. Leong replied that the attorney client privilege is to encourage the client to come to

the attorney for advice. Similarly, complaints and requests for advice the EC receives are confidential to also encourage people to seek advice.

She is also aware that in the state or city level, the Ethics Commission counsel provided incorrect advice to a city officer or employee. The circuit court found the employee violated the ethics law, but the circuit court mitigated the consequences because the violator sought advice from the Ethics Commission director in good faith. Therefore, advice from the EDLC does not insulate the person making the inquiry, but could mitigate the consequences of violations of the ethics laws, just as the COR advice would mitigate the consequences.

Commissioner Chen stated that she was concerned that employees would be confused; also, the attorney-client relationship requires the attorney to put the client's best interest above all others; finally, ethics issues are not straightforward; how will COR determine what is novel or a complex issue. Ms. Leong stated that her duty is to the city and county of Honolulu, not to the employee asking for advice and she will do what is in the best interest of the people as that is her "guiding light." Ms. Leong stated that she would use EC's advisory opinion to provide ethics advice. Commissioner Lilly suggested that Ms. Leong defer ethics advice to the EC staff because that is their area of expertise similar to private practice attorneys referring clients to another attorney who has that area of expertise. Ms. Leong stated that COR would work collaboratively with the EC staff and to the extent that COR could benefit from EC staff clarification she would encourage her staff to contact the EC staff.

Commissioner Silva asked what happens when an employee who is the subject of an investigation seeks legal advice from COR on the EC case. Will COR advise them or represent them? Ms. Leong stated that COR would not turn that employee away if COR can advise them as to the EC's process and how to comply with the standards of conduct.

Commissioner Burroughs told Ms. Leong that she has stated many times she would not discourage the employees from contacting the EC. He would prefer that she would have a policy to encourage the employee to come to the EC for advice and that the EC receive priority in the kind of recommendations that COR would make to their clients. Ms. Leong stated that if a complainant came to them, she would advise them to go to the EC. Commissioner Burroughs agreed that it made sense in that limited situation, but broadly speaking as people are asking for ethical advice that her policy should be to encourage the clients to come to the EC which is more beneficial to COR's clients.

The EDLC stated that he appreciated Ms. Leong's collaborative efforts to work with the EC. But, the EC has an ethics program that incorporates advisory opinions into training. How would the EC incorporate COR's attorney-client privileged novel advice into ethics training? Ms. Leong stated that she would not advise on novel issues. The EDLC asked if Ms. Leong or Ms. Shinn, the MD, made the final decision that COR would provide ethics advice. Ms. Leong replied that the Charter authorizes COR to provide advice and she is aware that this issue had

been discussed with the EDLC and other Corporation Counsels throughout the years. As such, she is just continuing the practice of COR to fully advise clients. The EDLC stated that a few months ago Ms. Shinn stated that she was going to have COR give ethics advice because it would be protected by the attorney-client privilege. He asked if Ms. Leong was aware of that statement. Ms. Leong confirmed that since EC staff counsels the EC, the advice they give to others would not be protected under the attorney-client privilege and that Ms. Shinn welcomes city officers and employees to come to COR on ethics laws. The EDLC again asked if Ms. Leong was aware if that was Ms. Shinn's reasoning for advocating that COR provide ethics advice. Ms. Leong advised the EDLC to ask Ms. Shinn.

Chair Gall stated that at this point there is a difference of opinion as to whether COR providing ethics advice is good policy. Chair Gall stated that he does not know what the EC is trying to achieve because there is no issue before the EC.

The EDLC requested to ask Ms. Leong a final question. The EDLC asked Ms. Leong if she considered Article XIV of the State Constitution in determining whether COR should provide ethics advice. Ms. Leong was not familiar with Article XIV of the State Constitution and so the EDLC read it to her, which provides that each county shall have an ethics commission which shall administer the ethics laws. She stated she absolutely took it into account by considering the Revised Charter of Honolulu which implements the Constitution. The EDLC responded that RCH defers to state laws and federal laws before granting COR authority to administer all city laws. Ms. Leong responded that COR does not believe that RCH and State Constitution are inconsistent and that she had fully addressed this issue in her October memorandum to the EC.

Vice Chair Wong offered that an EC subgroup, such as herself and perhaps the Chair could attend meetings with COR and EC staff in an effort to remove these items from the open session agenda. Ms. Leong stated that she would be open and happy to meet with EC staff as emails take a lot of time and meeting in person fosters better relationships. Vice Chair Wong noted that the EC trusts the EDLC and that he represents the EC.

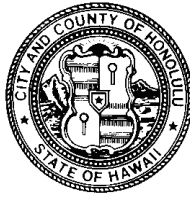
VI. ADJOURNMENT

Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: February 19, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Rachael S. Wong, Dr.PH, Vice Chairperson
Michael A. Lilly, Esq., Commissioner
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha A. S. DeCaires, EC Investigator
Darlene Nases, Po`okela Fellows Intern
Donna Leong, Corporation Counsel - COR
Geoffrey Kam, Deputy Corporation Counsel-COR
Angela K. Lo, PHR, Civil Rights Compliance Officer - OTS
Ernest Y. W. Lau, P.E., Manager and Chief Engineer – HBWS
Jill Kuramoto, Information Officer – HBWS
Marilyn C. Ushijima, Deputy Corporation Counsel – HBWS
Brian McKee, Chief Financial Officer (CEO) – HBWS
Richard E. Wilson, Attorney for Brian McKee

Absent: Charles W. Gall, Esq., Chairperson

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 477th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at approximately 11:30 am by Vice Chair Wong, and since there were several guests in attendance, she asked them to introduce themselves.

The Commission had before it the memorandum regarding the Agenda Items for the February 19, 2014 Meeting, Open Session, dated February 13, 2014.

In light of the Board of Water Supply (“BWS”) guests in attendance, the EDLC suggested that the EC take Agenda Item V.B. first as it was regarding the BWS. **Commissioner Yuen moved to enter into Executive Session. Commissioner Lilly seconded the motion. The motion passed unanimously.**

[Corporation Counsel, Donna Leong, Deputy Corporation Counsel, Geoff Kam, and Angela Lo of OTS, exited the room.]

V. EXECUTIVE SESSION

- B. For Action: Request for Motion to Approve and Adopt Staff’s Draft Advisory Opinion Regarding the Investigation of Alleged Misconduct at the Honolulu Board of Water Supply.

After discussion, the EC **unanimously approved and adopted Advisory Opinion No. 2014-1 for publication.**

[Ernest Lau, Jill Kuramoto and Marilyn Ushijima, all from HBWS, exited the room.]

Vice Chair Wong asked that the EC exit Executive Session in order to accommodate Ms. Leong’s pertinent agenda items. **Commissioner Silva moved to exit Executive Session and Commissioner Burroughs seconded the motion. The motion passed unanimously.**

IV. NEW BUSINESS

- A. For Discussion Administrative News

4. **FY 2014 and 2015 Budgets**

The EDLC stated that due to a clerical error in budget allocation, the EC has an additional \$25,000 in its salary fund for use in this fiscal year. Most of this money will be used for investigative services for outstanding complex cases. The EDLC will be making a budget presentation before the City Council Budget Committee on March 10, 2014.

Vice Chair Wong asked the EDLC for details of the budget presentation. The EDLC explained that he will have time to make his presentation after Department of Corporation Counsel makes their presentation. He also stated that he will present the items approved by the Department of Budget and Fiscal Services as well as disallowed items.

5. Requests for Opinion from Corporation Counsel

EDLC stated that staff received an email from Ms. Leong this morning in which she offered to meet with him and staff regarding outstanding legal opinions: COR's authority to manage the EC's budget and COR providing ethics advice. The EDLC stated that he would like to meet with her on those issues.

C. For Action: Request for a Motion to Confirm the FY 2014 Salary for the ALC and to Approve the Requested Fiscal Year 2014 Salary for the EDLC.

The EDLC explained that there was \$5,697 in cost savings due to the delayed start date of Ms. DeCaires in August 2013. Therefore, he is asking the EC to approve use of \$4,729 to increase the ALC salary to \$78,996, which is SR 26; Step K, and the EDLC salary to \$104,061 which is comparable to a COR section head. These were the initial amounts the EDLC had proposed at the November 4, 2013 meeting. But because these additional funds were not discovered until now, the ALC and EDLC accepted lower pay than the justified amount given their years of experience and work performance. The EDLC explained that this allocation would not affect the FY 2015 budget that the EC has already set.

Vice Chair Wong asked if there were any other budget discrepancies. The EDLC responded that he was not aware of any others For FY14.

Ms. Leong addressed the EC. She clarified that in November 2013, when she had a discussion with the EC regarding salaries and the budget, the 4% increase in salaries for exempt employees that was authorized by the administration represented the commensurate increase in bargaining that occurred. Ms. Leong stated that she used the 4% increase to give merit raises to her deputies. She stated that the EDLC is asking for an additional increase to the ALC and EDLC salary for 2014, but the raises the EC gave on November 4 used up the 4% increase. She further stated that the extra \$25,000 and \$5,000 that had been discussed earlier were monies in the budget specified for investigative services. She stated in a memo that if the EC staff used this money for salary increases this year, they won't have funds to use later for investigative services.

Ms. Leong continued that she was in agreement with the EDLC that the \$25,000 will be used for a specific complex case. So she is really referring to the extra \$5,000 that was originally appropriated for investigative services that were unused because of the delayed start date. Ms. Leong asked for the start date of the new salary should the EC grant the EDLC's request. The EDLC responded that the new rate would be retroactively effective from July 1, 2013. Ms. Leong confirmed that the new salary would not affect the 2015 salaries.

Vice Chair Wong confirmed with Ms. Leong that the EDLC is the Executive Director and administrator for the EC staff and that the EC has the final say on the salaries. Ms. Leong confirmed that the EC delegated power to the EDLC to address the staff salaries.

Commissioner Chen asked the Commission to enter into Executive Session. The EDLC stated that they could enter Executive Session in order to discuss personnel issues, but the salary amounts are public information.

Commissioner Chen moved to enter into Executive Session. Commissioner Silva seconded the motion. The motion passed unanimously.

[All guests and staff with the exception of the Legal Clerk exited the room.]

At 12:40 the EC reconvened in Open Session. **Vice Chair Wong announced that during Executive Session, the EC approved the ALC's salary to \$78,996 for FY14 retroactive to July 1, 2013 and approved the EDLC's salary to \$105,028 for FY 14 and retroactive to July 1, 2013. This is a 4% increase from the FY 14 salary for the EDLC.**

Vice Chair Wong thanked Ms. Leong for attending the meeting and that the continued communication was important.

IV. NEW BUSINESS

A. For Discussion Administrative News

6. Response by Department of Transportation Services Regarding Ethics Policies for the Bus Transportation Provider.

The EDLC stated the he has received the conflict of interest and ethics policies adopted by Oahu Transit Services ("OTS"). Staff also received the draft rules for investigation of the ethics and conflicts of interest policies from the Department of Transportation Services. Staff will review the policies and draft rules. The EDLC thanked Angela Lo, Ethics Compliance Officer, OTS for attending the meeting. He stated that Ms. Lo started working with OTS in January and that we will be working together with her.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE NOVEMBER 4, 8 AND DECEMBER 4, 2013 AND JANUARY 6, 2014 MEETINGS.

Commissioner Yuen moved to approve all of the referenced minutes. Commissioner Silva seconded the motion. The motion passed unanimously.

III. OLD BUSINESS

A. The next meeting date was confirmed for March 17, 2014 at 11:30 am.

B. The EC confirmed the following meeting for April 16, 2014 at 11:30 am.

IV. NEW BUSINESS

A. For Discussion: Administrative News

1 - 3. Complaints, Requests for Advice, Website Hits, Training Statistics.

The EDLC explained that the Department of Information Technology is using a new analytic system for measuring website hits. Therefore, the EC's website hits increased from 621 in December to 3,397 in January.

7. Commission Staff Legal Opinion Regarding Obtaining Electronic Files of City Personnel.

The ALC referred the Commissioners to Open Session, Exhibits 2 and 3. The ALC stated that in response to the EC's request for written confirmation of the legal standard required for "proper justification" at the last meeting, staff drafted a memo to COR asking for confirmation. Ms. Leong asked for an extension to respond by the end of February. Chair Gall granted her the extension.

Commissioner Chen asked if delay in response to the memo is affecting any of our investigations. EC Investigator DeCaires confirmed that in the past, the delays in obtaining files caused difficulty in her investigations. Once she was unable to obtain a certain timeframe of documents, and the other time there was failure to obtain any files for a critical witness. The EDLC stated that at this point he believes that there are no outstanding requests.

IV. NEW BUSINESS

B. For Action: Request for a Motion Approving Memorandum to Mayor and City Council regarding Expanding Ethics Commission Jurisdiction to Instrumentalities of the City, Secured Employees and Independent Contractors.

The ALC stated that staff has been receiving complaints about individuals that are not within the EC's jurisdiction. The EC staff has been unable to take any enforcement action because these individuals are not within the EC jurisdiction. Most recently, this issue came to our attention through the City Auditor who reported a Honolulu Authority for Rapid Transportation independent contractor who used \$500,000 of city funds for political activity and inappropriate blogs. Staff felt that it was time to bring this problem to the attention of our law makers. Staff wanted the memo to generate discussion and inform them that the EC intends to propose legislation regarding this issue. Staff wanted the EC's support on this memo. The ALC referred the Commissioners to Open Session, Exhibit 5, and apologized for the late receipt of the memo.

Commissioner Chen asked if this issue regarding jurisdiction has come up before. The EDLC responded that it has. He stated that a few years ago Councilmember Ann Kobayashi

amended the Revised Ordinances to include Honolulu Authority for Rapid Transportation and Board of Water Supply employees in the EC jurisdiction. One of Councilmember Kobayashi's questions then was whether her amended laws would also apply to the uncovered individuals like independent contractors. The EDLC further stated that justification is a grey issue and there are different approaches to determine whether an individual is really an employee or an independent contractor such as certain factors used by the IRS.

Vice Chair Wong asked if Chair Gall had the opportunity to review the memo yet. The ALC responded no, since it had just been distributed this morning. The ALC advised that the EC could defer the matter to next month as the issue is not time sensitive.

Vice Chair Wong confirmed that this agenda item will be deferred to next month.

EDLC suggested that the EC move to enter into Executive Session to complete review of the agenda items. **Commissioner Burroughs moved to enter into Executive Session. Commissioner Silva seconded the motion. The motion passed unanimously.**

V. EXECUTIVE SESSION

- A. For Action: Request for Motion to Approve the Minutes of the Executive Sessions of the November 4 and December 4, 213 Meeting.

A motion was made and seconded to adopt the minutes. The motion passed unanimously.

- C. For Action: Hearing Regarding Complainant's Exceptions to the Hearing Officer's Report and Recommendations in Case.

The ALC stated that last week Wednesday, opposing counsel contacted staff and stated that they were unavailable for this meeting. The parties stipulated to moving the hearing to March 17, 2014 at 11:30 am pending EC approval of the Stipulation.

Deputy Corporation Counsel Geoff Kam informed the EC that he was in possession of the record of the case and that if the EC wanted to review any of the exhibits or other documents they could contact him. He also stated that he did not have a copy of the official transcript because the Hearing Officer did not order one, although he had a copy of the condensed transcript that was provided as Attachments 1 and 2 to Complainant's Exceptions.

- D. For Action: Request for Motion to Find Probable Cause of Violations RCH Sec. 11-104 (Misuse of City Position) and RCH Sec. 11-102.1(a) and ROH Sec. 3-8.7 (Acceptance of Unlawful Gifts) by City Employee.

After a brief synopsis of the case by the ALC, **Commissioner Lilly moved to designate the EDLC as Complainant and to issue the Notice of Alleged Violation to the subject of the**

Complaint. Commissioner Yuen seconded the motion. The motion passed unanimously.

Vice Chair Wong asked if there was any further discussion or outstanding agenda items. There being none, **Commissioner Burroughs moved to exit Executive Session and to adjourn the meeting. Commissioner Chen seconded the motion.**

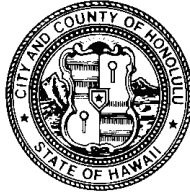
IV. ADJOURNMENT

The meeting was adjourned at approximately 1:15 pm.

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: March 17, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson [For all items except V.C.]
Katy Chen, Esq., Vice Chair
Michael A. Lilly, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner [For all items except V.C.]
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha A. S. DeCaires, EC Investigator
Amy R. Kondo, Deputy Corporation Counsel-COR [Item V.B. only]
REDACTED [Items V.B. only]
REDACTED, Esq. [Items V.B. only]
REDACTED, Esq. [Items V.B. only]

Absent: Rachael S. Wong, Dr.PH, Commissioner

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 478th meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:40 am by Chair Gall, and since there were several guests in attendance, he asked them to introduce themselves.

The Commission had before it the memorandum regarding the Agenda Items for the March 17, 2014 Meeting, Open Session, dated March 10, 2014.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE FEBRUARY 19, 2014 MEETING

Chair Gall asked for a motion to approve the minutes. Commissioner Yuen moved to approve the minutes. Commissioner Silva seconded the motion. The motion passed unanimously.

III. OLD BUSINESS

- A. The following meeting of the EC was confirmed for April 16, 2014.
- B. The subsequent meeting of the EC was confirmed for May 30, 2014.

IV. NEW BUSINESS

A. Administrative News

- 1-3. The EDLC referred to his report of March 10, 2014.
- 4. FY 2015 Budget – The EDLC informed the EC that he made his budget presentation to the Budget Committee on March 10, 2014 and referred to OPEN-1 attached to his memo
- 5. Requests for Opinion from Corporation Counsel – The EDLC informed the EC that on Mar 13, 2014, staff received three opinions from COR including the standard for proper justification, and agency due diligence. The last opinion was in regard to credit unions for an informal advisory opinion. EDLC stated that staff will review the opinions and will provide the EC with an update.

[Commissioner Chen entered the meeting at approximately 11:50 am]

EDLC asked the Chair to take the agenda items out of order to accommodate the guests present. **Chair Gall asked for a Motion to enter Executive Session. Commissioner Burroughs made a motion to that effect. Commissioner Lilly seconded the motion. The motion was passed unanimously.**

V. EXECUTIVE SESSION SUMMARY ITEM B - For Action: Hearing Regarding Complainant's Exceptions to the Hearing Officer's Report and Recommendations

Complainant and then Respondent addressed the Commission. The Parties were excused and left the meeting room. The Commission deliberated with their COR Deputy Kondo present. Thereafter, the Parties were asked to re-enter the room.

Chair Gall stated that the EC decided to adopt the Hearing Officer's Report and

that Chair Gall would draft an addendum to the Report that would recommend that a city division provide adequate guidance and rules of procedure to be followed for RFQs. Chair Gall stated that he will work on it for review and adoption by the EC.

Chair Gall asked for a motion to exit executive session. Commissioner Lilly so moved. Commissioner Burroughs seconded the motion. The motion passed unanimously.

IV.B. For Action: Election of Vice Chair of the Commission

Chair Gall asked for nomination of a Vice Chair. Commissioner Lilly asked if Vice Chair was resigning. EDLC replied that the Vice Chair wanted to remain on the EC but felt that due to the workload from her job, she couldn't dedicate enough time to be the Vice Chair of the Commission.

Commissioner Silva nominated Commissioner Chen and Commissioner Yuen seconded the nomination.

Commissioners Yuen, Silva, Burroughs, and Lilly voted in support of Commissioner Chen being Vice Chair. Commissioner Chen voted for Commissioner Lilly. Chair Gall announced that Commissioner Chen was the new Vice Chair of the Commission.

IV.C. For Action: Request for Motion Approving Memorandum to Mayor and City Council regarding Expanding Ethics Commission Jurisdiction to Instrumentalities of the City, Secured Employees and Independent Contractors

The ALC stated that this issue had been deferred from the last meeting as Vice Chair Wong did not want to review this matter until Chair Gall had the opportunity to review the proposed memorandum attached as OPEN-2.

The ALC stated that within the last several years, staff begin receiving more complaints about entities such as instrumentalities of the city such as the Bus employees, secured employees who are hired by the city to perform city jobs, and third party contractors. Therefore, this memo is to bring this issue to the lawmakers attention and to let them know that the EC plans to introduce legislation in the future to expand its jurisdiction to these uncovered individuals.

Commissioner Lilly expressed concern over expanding jurisdiction over independent contractors. He suggested to limit the language to "those contractors that have significant involvement with city works, fiscal authority, and discretionary power. The ALC agreed to make the changes to the memorandum and resubmit it for the EC's review.

The ALC explained as background information that this issue came up when the City Auditor reviewed the Honolulu Authority for Rapid Transportation (HART) contracts for compliance with federal mandates and best management practices, they discovered an

independent contractor that was hired to update HART website, and blog about HART, used city money to write 118 blogs about political, editorial or other inappropriate matters. Had this person been a city employee, he would have been found to have violated the city's ethics laws. Commissioner Yuen asked if the increase in jurisdiction would encompass independent contractors for the entire city or just HART. EDLC responded that it would encompass the entire city.

Chair Gall expressed his concern for increasing the EC's jurisdiction over independent contractors. Commissioner Lilly also stated that it should be narrowed down. The ALC stated that she would revise the memo and resubmit it for their review and approval.

Chair Gall asked for a motion to re-enter executive session. Commissioner Lilly so moved. Commissioner Burroughs seconded the motion. The motion passed unanimously.

V. EXECUTIVE SESSION SUMMARY

A. For Action: Motion to Approve the Executive Session Minutes for February 19, 2014

The EDLC asked for a motion to approve minutes excluding the section that Vice Chair Wong was still reviewing related to EDLC and ALC's salaries. Vice Chair Chen stated that she wanted to defer approval until the entire meeting minutes were prepared.

C. For Action: Request for a Motion to find Probable Cause of Violations of RCH Sec. 11-104 (Misuse of City Funds and Position) and RCH Sec. 11-102.1(a) and ROH Sec. 3-8.8 (Solicitation, Acceptance or Receipt of Prohibited Gifts by Former City Officer

Chair Gall and Commissioner Yuen announced a conflict of interest and recused themselves from this matter.

After discussion, Vice Chair Chen asked for a motion to find probable cause as to Claim II of the Notice. Commissioner Burroughs made a motion to that effect. Commissioner Lilly seconded the motion. The motion passed unanimously.

Vice Chair Chen asked for a motion to exit Executive Session. Commissioner Silva made a motion to that effect. Commissioner Burroughs seconded the motion. The motion passed unanimously.

VI. ADJOURNMENT

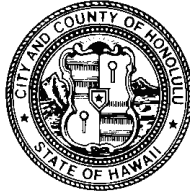
Vice Chair Chen asked for a motion to adjourn the meeting. Commissioner Burroughs made a motion to that effect. Commissioner Silva seconded the motion. The motion passed unanimously.

The meeting was adjourned at approximately 1:45 pm.

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: April 25, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson [For all items except V.E and F.]
Katy Chen, Esq., Vice Chair
Michael A. Lilly, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner [For all items except V.E and F.]
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
[For all items except V.C]
Laurie A. Wong, Associate Legal Counsel (ALC)
[For all items except V.C]
Letha A. S. DeCaires, EC Investigator
Darlene Nases, Po'okela Intern EC
Geoffrey Kam, Deputy Corporation Counsel, COR
[For all items except V.D]
REDACTED [Item V.E and F only]
REDACTED
[Item V.E and F only]
REDACTED, Respondent [Item V.B only]
Sophie Cocke, Reporter – Civil Beat [Open Session only]

Absent: Rachael S. Wong, Dr.PH, Commissioner

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 479th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at approximately 11:33 am by Chair Gall, and since there were several guests in attendance, he asked them to introduce themselves.

The Commission had before it the memorandum regarding the Agenda Items for the April 25, 2014 Meeting, Open Session, dated April 17, 2014.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE MARCH 17, 2014 MEETING

Vice Chair Chen and Commissioner Lilly requested several non-substantive changes to the minutes. Chair Gall requested that the minutes be more streamlined. Chair Gall requested additional edits.

Chair Gall moved that staff revise the minutes per the Commission's requests and that the minutes be brought back before the Commission for review and approval at the next meeting. Commissioner Silva seconded the motion. The motion passed unanimously.

In regard to the confidential section of the minutes, Chair Gall stated that it was provided that morning and that it should be reviewed at the next meeting.

III. OLD BUSINESS

- A. The following meeting of the EC was confirmed for Friday, May 30, 2014 at 11:30 a.m.
- B. The subsequent meeting of the EC was confirmed for Wednesday, June 26, 2014, 11:30 a.m.

IV. NEW BUSINESS

A. Administrative News

The EDLC reported that the Commission has received more complaints this year than the same time last year. He also reported that the Commission has received fewer requests for advice this year than at the same time last year. The EDLC stated that this year's trend is an increase in alleged violations and requests for contested hearings.

In regard to the website, the EDLC stated that the new statistics program being used shows that there are more website hits.

In regard to education and training, the departments appear on track to complete ethics training for all City employees by the end of June 2014. There are just a few departments that are behind (e.g., HFD, HPD). In regard to HPD, the EDLC initially believed that they were conducting their own ethics training, but after review, of their ethics training the EDLC determined that the content was inadequate. The EDLC and Investigator DeCaires worked with them to create new content for their on-line training which went live a week ago. The EDLC

expects HPD to train all or their employees on time. HFD has completed training for about half of their employees to date.

In regard to the fiscal years 2014 and 2015 budgets, staff is trying to utilize all the remaining funds from FY14 by making needed purchases and contracting for needed services and support. The EDLC stated that Council has not added any of the FY15 budget amount requested, above what the administration allowed. In fact, the Budget Committee deducted \$4,000 from the proposed FY15 budget request in category for hearings officers and transcription services.

The EDLC informed the Commissioners that the Managing Director has notified the office that the administration is planning to move all the boards and commissions to the Sprint building on Dillingham Boulevard. The EDLC stated that he has requested that the office stay on “campus” to be near working City offices. Although there would be a rental cost saving to the City, there are concerns about parking and location. Further, the office would share a common meeting room with all the other commissions, which may be difficult because of the high usage. The EDLC stated that he will keep the Commissioners updated.

In regard to the status of Department Corporation Counsel (COR) opinions, there are still outstanding requests for the following:

- COR’s legal authority over the control of the ethics budget; and
- COR’s legal authority to give ethics advice given that the State Constitution mandates that the ethics code for each county shall be “administered” by the county’s ethics agencies; our argument is that administration includes interpretation, training and not just xeroxing copies.

These issues may be asked of COR by the EC staff:

- what the term administratively attached means; and
- language changes to the ordinance that will require ethics laws to include OTS, and for OTS to include definitions that would not interfere with the language for the Teamsters’ contract.

In regard to specialized training, the office has trained 35 Administrative Services Officers in the process of an ethics investigation relating to the “7 Steps of Just Cause”. This training session was very helpful to inform about the due process requirements in a pragmatic way so that civil service employees are treated fairly while departments can use the ethics investigation to make their own investigations more efficient.

The EDLC stated that staff met with the Purchasing Division, Department of Budget and Fiscal Services, as well as the State Procurement Office, because procurement violations often result in ethics violations due to the nature of the special or preferential treatment to vendors. Procurement is a complex area, and we are not claiming to be experts, but we are building expertise.

In regard to social media, ALC stated that she made a soft launch of the Ethics Commission Facebook (FB) page. The FB page has been set in broadcast mode, with no comments allowed from the public for now. She stated that she posted a disclaimer stating that the Commission would not receive complaints via FB. Relevant articles about local and national events, meeting information, and other updates are posted. ALC requested photos and bios of the Commissioners for posting. She stated that there is a link to FB from the ethics website. She explained that the benefit to having FB is to communicate quickly with the community and bring their attention to new content on the ethics website.

ALC also reported that the whole City will be required to use a new website content manager shortly and she and Po'okela Intern, Darlene Nases, are attending classes in the next week to renovate the Ethics Commission website

The EDLC stated that this is the first time that the Office of the City Auditor released the National Citizen Survey for Honolulu. The results were saddening. Our citizen responses were compared to other citizen responses from 15 other unknown benchmark cities of populations over 300,000. As noted in the open session memo:

- Confidence in city government: 23%
- City government acts in the best interest of the community: 25%
- City government is honest: 24%
- City government treats all residents fairly: 22%

All of these Honolulu ratings were ranked “lower” (meaning that Honolulu had at least a 10% lower rating) or “much lower” (at least a 20% lower rating) than the benchmark communities from around the country. Commissioner Burroughs stated that he believed that this is a good baseline and would be good to track for trends in the future.

In regard to the FBI Citizen's Academy, the ALC reported that she has been attending the Academy after being nominated by one of the local special agents we met through our case interactions. She stated that the 8 week long session is held at the Kapolei office with 25 other community members, public and private sector, including other city and state officials, local business owners, members of the hotel industry and financial institutions. She reported that the curriculum is varied.

B. For Action: Request for a Motion Approving Memorandum to Mayor and City Council regarding Expanding Ethics Commission Jurisdiction to Instrumentalities of the City, Secured Employees and Independent Contractors.

The ALC stated that this matter has been on the agenda for the past two or three meetings. In the past several years, there has been an increase in the number of complaints and questions received relating to ethical misconduct by “Uncovered Individuals,” those who are not included within the City's ethics laws. These parties have come to our attention because of their

discretionary authority and/or financial power to make decisions about City resources. At that last meeting there was a request to limit the language regarding independent contractors.

Based on the Commission requests, we have limited the term to: “those contractors that have significant involvement with city works, fiscal authority, and discretionary power.” This is just a very general memo that we would like the backing of the commission to send to the City to open a dialogue in the City.

Chair Gall stated that he still felt strongly that it was not appropriate to include independent contractors within the purview of the Commission. He felt that to do so would open too many issues as to the Commission’s authority and who is covered. Chair Gall stated that he cannot support that. He stated that it made sense to bring an entity like OTS within the purview of the ethics laws, but using the term “independent contractors” is too broad, and there is no basis for the Ethics Commission’s jurisdiction over them. The ALC asked if the added language sufficiently limited the term. Chair Gall stated that even with the limiting language, he still could not support using the term “independent contractors.”

Chair Gall suggested deleting certain overly broad language.

Commissioner Lilly stated that he was concerned that a person who is an independent contractor can make City fiscal decisions and should be held accountable for their decisions, because there is now a blurred line as to their responsibility to the tax payer and their own company. Commission staff is pointing out that there is a category of people who are not accountable but have fiscal authority and are not city employees.

Chair Gall stated that he believed that the category of people who Commissioner Lilly is concerned about were already covered in the general language of the memo.

Commissioner Yuen stated that ultimately there is someone at the city who contracted with the independent consultant, so it is the City’s responsibility to ensure that the contractor is using the government resources properly. The person making the decision of oversight or contracting should be held accountable.

In response to Commissioner Yuen’s concern, the EDLC stated that there are situations such as in HART where there is a subcontractor, working for a contractor, who was contracted by the director of HART. In those situations it would be hard to tell the head of HART that he is responsible for what the subcontractor did. The EDLC told Commissioner Yuen that in theory he is correct, but staff has already tried that route and people are not held accountable in practice.

Commissioner Burroughs asked if footnote 2 in the draft memo reflects the language in the Revised Charter in which “independent contractor” is used in conjunction with “instrumentality of the city” when defining OTS? The EDLC confirmed. Commissioner

Burroughs told Chair Gall that it would be difficult to get away from the term “independent contractor,” given the Charter’s description of OTS.

Commissioner Lilly stated that when this issue came up before in the prior meeting, that the concern was including independent contractors that had nominal contracts with the city. Commissioner Lilly stated that the Commission asked staff to narrow the language, which they did. He asked Chair Gall if the language was not narrow enough.

Chair Gall asked if the memo should come from commission staff instead of the Chair. The EDLC stated that it depends on the level of priority. In the past staff had the memo signed by the Chair because he believed that the recipients listen to the commissioners more carefully than staff.

Commissioner Burroughs asked if other cities have dealt with this issue. The EDLC stated that the Los Angeles Public School District actually required all independent contractors to follow that school system’s ethics code. Vice Chair Chen asked if that was a condition of contracting with the school district. The EDLC confirmed.

Vice Chair Chen, stated that the contractual approach is a different option than expanding jurisdiction to independent contractors. Chair Gall stated that he was more comfortable with the conditional contractual approach.

Commissioner Yuen recalled his experience with the Federal government. He reiterated that somebody at the city is responsible because they are overseeing the work of the contractor. The EDLC restated that for example, although the director of HART is responsible for ensuring the contract is completed correctly, we cannot hold him accountable for any ethics violations such as using city resources to post political blogs of a subcontractor because we cannot say that he knew or should have known. In that situation, the Commission also could not enforce any ethics laws against the subcontractor.

Vice Chair stated that her non-profit organization, PATCH, was required to include this in their bylaws code of conduct as a condition of eligibility for funding. She stated that this is another option that the EDLC referred to in the LA School system. The EDLC reiterated that this memo is only to get the conversation started, not dictate exactly how this will be implemented.

Vice Chair Chen suggested that the independent contractors should have oversight based on a condition of the contractual agreement, but currently there is no oversight.

Chair Gall offered language for the memo: delete the third bullet point and insert “individuals who are not city employees but have significant fiscal authority and discretionary power with respect to city matters.” Chair Gall stated that if staff uses this language, then he would be comfortable, and also to consider what Vice Chair suggested.

Chair Gall asked for a Motion to adopt the Memo subject to his suggested changes. Vice Chair Chen made the Motion, Commissioner Burroughs seconded the Motion. The Motion passed unanimously.

Commissioner Lilly made a motion to enter Executive Session. Commissioner Burroughs seconded the motion. The motion passed unanimously.

V. EXECUTIVE SESSION SUMMARY

- E. For Action: Complainant's Request to Set a Date for Contested Case Hearing Regarding Respondent; Respondent's Motion to Continue Hearing to Set Date for Contested Case Hearing; Complainant's Memorandum in Opposition to Respondent's Motion.**

Respondent and Complainant presented oral argument before the Commission. Commissioner Lilly moved that the Commission set the contested case hearing in this matter for a certain date and time. Commissioner Silva seconded the motion. The Motion was passed unanimously.

- F. For Action: Request for a Motion to Find Probable Cause and to Amend the Notice of Alleged Violations of Standards of Conduct (Amended Notice) to Include a Claim for Failure to File Conflict of Interest Disclosures (RCH Sec. 11-103) by Former City Officer.**

Complainant and Respondent presented oral argument before the Commission. Commissioner Lilly made a motion to approve the Amended Notice. Commissioner Burroughs seconded the motion. The motion was passed unanimously.

- B. For Action: Motion to Approve and Adopt Stipulation to Settle Case No. 14-031.**

Complainant and Respondent were before the Commission and presented the Motion. Commissioner Burroughs moved to approve the Settlement Agreement as amended. Commissioner Lilly seconded the motion. The motion passed unanimously.

- C. For Action: Approve and Adopt Advisory Opinion No. 2014-02.**

After brief discussion, Commissioner Lilly moved to adopt Advisory Opinion No. 2014-2 with suggested redactions for the published opinion. Vice Chair Chen seconded the Motion. The Motion passed unanimously.

- D. For Action: Motion to Find Probable Cause that a City Employee Violated RCH Sec. 11-102.1(e) and ROH Sec. 3-8.2(c) (Appearing before City Agency).**

After staff made a presentation before the Commission, **Commissioner Yuen made a motion to find probable cause and to approve the Notice of Alleged Violation. Commissioner Burroughs seconded the motion. The motion was unanimously passed.**

Commissioner Lilly made a motion to exit Executive Session and adjourn the meeting. Commissioner Burroughs seconded the motion. The motion passed unanimously.

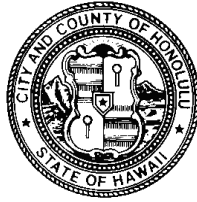
VI. ADJOURNMENT

The meeting was adjourned at approximately 12:45 pm.

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: May 30, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson [For All Items Except IV.A.3]
Katy Chen, Esq., Vice Chair (Arrived 12:30 p.m.)
Michael A. Lilly, Esq., Commissioner
Stephen Silva, Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha A. S. DeCaires, EC Investigator
Geoffrey Kam, Deputy Corporation Counsel, COR

Absent: Rachael S. Wong, Dr.PH, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 480th meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:40 am by Chair Gall.

The Commission had before it the memorandum regarding the Agenda Items for the May 30, 2014 Meeting, Open Session, dated May 23, 2014.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE MARCH 17, 2014 and APRIL 25, 2014 MEETING

A motion to approve and adopt the minutes of the open sessions of the March 17 and April 25, 2014 Meetings was made by Commissioner Yuen. The motion was seconded by Commissioner Silva and unanimously approved.

III. OLD BUSINESS

The following meetings of the EC were confirmed for Thursday, June 26, 2014 at 11:30 am and Wednesday, July 23, 2014 at 11:30 a.m.

The Commissioners discussed further dates for meetings and confirmed availability for a specific meeting for those Commissioners to hear motions for the contested case on Tuesday, June 10, 2014 at 11:30 am. Commissioner Lilly asked about the media coverage of this case. EDLC recommended that the Commission discuss this in Executive session. This discussion was deferred until Vice Chair Chen was present.

The Commissioners decided to hear motions for the contested case on Tuesday, June 10, 2014 at 11:30 am.

IV. NEW BUSINESS

A. Administrative News

The EDLC referred to his memorandum to the Commission regarding Open Session items dated May 23, 2014 in regard to the Commission's statistics (sections 1 and 2 on the agenda) stated that there was nothing remarkable to note in this month's complaints and requests for advice statistics.

3. Fiscal Year 2014 Budget Expenditures.

The EDLC stated that the deadline to expend FY 2014 funds is approaching quickly, the end of June. Staff has had several issues in trying to timely use FY 2014 funds before the end of the year.

The EDLC stated that the first issue was in regard to purchasing a \$600 GPS device for an investigation regarding an alleged overtime fraud scam. Commissioner Lilly noted that investigations of this nature have very short "windows" of opportunity for surveillance. The EDLC stated that in order to determine where the subjects are going in city trucks, staff wanted to attach the GPS device to City vehicle(s). Staff has a COR legal opinion from a few years ago for approval to use a GPS device with the recommendation to obtain the consent of the Department in question. In this case, staff received approval from Director of the Department in which the subjects work. Staff tried to purchase the GPS system through COR. This request went unanswered for three weeks and when questioned, COR stated that the request was "under review." COR later told staff that there were "policy implications" related to our purchase. The EDLC explained that he asked Managing Director Ember Shinn for assistance in this matter and Ms. Shinn requested that Corporation Counsel, Donna Leong, and/or First Deputy, Sheryl Nicholson, resolve this issue with us. But so far there still has been no response. Because of this delay, this investigation has now been compromised.

The second item at issue is trying to obtain funding to contract with investigators to help staff with surveillance such as in the previously described case and other excess investigative work including the ORI investigation. Staff has made the request for the contract to COR, but no one has responded to staff. After COR approves the contract, it still needs to be routed through the Department of Human Resources, Budget and Fiscal Services and then to the City Council because we are asking to shift \$28,000 from one account to another. All of this must happen by the end of June in order for us not to lose our FY 2014 funds. At this time it looks as if this will not be feasible because of the time constraints to complete.

The third item is in regard to the already approved Legal Clerk I position. Staff requested COR to provide us with any current position description to be used as a template to create our new job description. COR responded that they do not have one to give us because they do not use any Legal Clerk I positions. No other solutions or help have been offered. The filling of this position is critical and it takes significant time to not only create the job description for approval, but also go through the process of posting, applications, interviews and hiring.

Commissioner Lilly asked why staff is going through COR instead of directly to the Department of Human Resources (DHR) since COR is only supposed to be our conduit for administrative purposes. The EDLC explained that he has not gone directly to the DHR for assistance because it was his understanding that we have to go through the chain of command which starts with COR. Also, the EDLC explained that in regard to this Administration, he has been told that all questions for DHR from the Commission must go to the DHR Director. The EDLC stated that this is a simple request that the COR Administrative Services Officer (ASO) should be able to provide assistance, because it is part of typical administrative duties of any ASO. The EDLC further stated that the Legal Clerk I comprises 20% of the Commission staff and we need to get the position description ready by July 1st.

The final issue was that we need to use FY 2014 funds for a build out of the current office to accommodate the additional employee. The EDLC explained that there has been talk that all City Commissions will be moved to the Sprint Building. The earliest the office would move to the new location, due to required renovation, is in December. When we get our new position filled, we will not have any room to accommodate the staff unless there is a build out. COR is not responding to our requests for help in this matter either.

Commissioner Lilly stated that he is concerned that there is a recurring spectrum of either benign neglect or intentional harm from COR occurring for administrative and investigative functions of the Commission. Vice Chair Chen stated that she remembered that in at least one previous case, COR's failure to respond in a timely manner compromised EC's investigations. The Vice Chair believes that the EC's efforts should be supported by COR administratively--not hindered or frustrated by lack of response in a timely manner.

Commissioner Silva asked how much money was lost by not having the GPS in time? Investigator DeCaires responded possibly a quarter of a million dollars.

Chair Gall asked if the Commission could pass a resolution. The EDLC responded that it

could, as it did in the past when a resolution was required to initiate certain aspects of an investigation.

Chair Gall stated that in regard to language for a resolution, he is more comfortable with the terms, “a lack of responsiveness” as opposed to “benign neglect.” Chair Gall asked Deputy Corporation Counsel Geoff Kam if he had insight on how the Commission could resolve this.

Deputy Kam stated that since the conflict between the Commission and COR has been made public last fall, he has not been involved with these types of budget issues. Deputy Kam stated that he didn’t believe that passing a resolution was necessary and instead suggested the Commission write a letter to Ms. Leong because a discussion at that level is warranted at this point. Commissioner Silva added that the Mayor needs to be copied on the letter.

The EDLC stated that he believed that the letter should be addressed to the Managing Director with a copy to Ms. Leong because the Managing Director will direct others to respond to this issue. The EDLC asked that the Commission authorize him to write the letter which will reflect the position of the Commission.

Deputy Kam advised that the Commission should sign the letter as opposed to the EDLC, since it is reflecting the views of the Commission. Commissioner Yuen stated that since the requests from staff have not yielded results, perhaps it would be better to have the letter signed by the Commission.

Chair Gall stated that he was comfortable with the EDLC drafting and signing the letter. Chair Gall instructed the EDLC to send the draft letter to Commissioner Lilly, since it was his Motion, and to also send it to the Chair so there can be final approval and signature. The EDLC stated that he did not anticipate the Commission’s action in this manner and asked to move into Executive Session.

Deputy Kam asked the EDLC what the grounds were for moving to Executive Session. The EDLC stated the Commission staff needed to provide advice to a member because of a potential conflict of interest issue.

Commissioner Yuen moved to enter into Executive Session. Commissioner Michael Lilly seconded the Motion. The Motion passed unanimously.

After discussion, Chair Gall recused himself in regard to this agenda item. The **EDLC added that Chair Gall’s recusal at this point means that there is no quorum to hear this matter since Vice Chair Chen was not present.** Further discussion involved whether the Commission would defer the matter to the next meeting or to when Vice Chair Chen arrived at the present meeting.

Chair Gall requested to continue with the Executive Session agenda items.

[Vice Chair Chen Entered the Meeting at 12:30 p.m.]

The EDLC summarized the earlier discussion for Vice Chair Chen. Vice Chair Chen asked if we know for certain that the investigation has been compromised. The EDLC and Investigator DeCaires responded, “yes”.

Commissioner Lilly stated that he had made a motion earlier in the meeting for the Commission to transmit a letter that we see a pattern of lack of support by the administration for what we do as an independent agency. We are being repeatedly hamstrung by the bureaucracy and we want this to come to an end. Vice Chair Chen said that this is also at the expense of the public. Commissioner Lilly stated the EC’s mission is being thwarted by the bureaucracy. The EDLC stated that Commissioner Lilly had used the term “benign neglect”, whereas Chair Gall suggested the terms “lack of timely response” to be included in the letter.

Vice Chair Chen questioned Chair Gall’s recusal in this matter. The EDLC explained that Chair Gall disclosed today that he and his firm does work for COR so that his involvement in a vote such as this would be inappropriate.

Some of the other language proposed in the letter could be that the agency that we are attached to should support, not frustrate our purposes. Vice Chair Chen stated that she believed it should be emphasized that this is a pattern of behavior and these recent incidents are not isolated. Commissioner Silva stated that he wanted to include the dollar amount that the taxpayers have lost as a result of the delay in our equipment. Commissioner Lilly stated that for the want of a \$600 piece of equipment, they compromised an investigation that could have identified fraud, waste and abuse of a quarter of a million dollars was thwarted. Vice Chair Chen stated she is also very troubled with the Managing Director’s previous statement at the Commission’s Fall 2013 meeting that the Commission’s investigations don’t really save the city money from fraud, waste and abuse because it just leads to cases being grieved by employees.

The EDLC stated that what he took from the Managing Director’s comment was that the potential for bureaucratic problems to arise outweighed the benefit of conducting investigations to identify and eliminate fraud, waste and abuse. The EDLC stated that since this is the tone from administration, we shouldn’t be surprised about our treatment from lower tiers of government. Vice Chair Chen agreed that the Commission send the letter to the Mayor.

The EDLC stated that this is another reason why the EC publishes formal advisory opinions and forewarns employees what could happen when they do certain actions. The coconut wireless in the City works well and quickly, and when an employee is “dinged,” the people throughout the whole system are more careful with their own actions. He stated that the EC needs to draft a non-incendiary letter to help us clearly identify these on-going problems but leave room for solutions.

Commissioner Lilly stated that the letter should come from the Commission with the Vice Chair’s signature. The Commission needs to address again what happened last Fall that we

believed had been resolved. He reiterated that the EC is only attached to COR for administrative purposes. COR has no oversight regarding our budget and policy. COR has no business raising a policy issue with respect to our independent functions. COR is using their administrative authority to basically supervise the Commission. We need to be independent because we might have to investigate COR from time to time. To question the EC's purchasing of a GPS device to investigate misuse of a city resource as a policy issue, COR questions if we have the authority to make this purchase. COR could stop anything we do with that same policy argument.

The EDLC stated that what the EC does is on the cutting edge of making people accountable in government which creates a lot of resistance. Commissioner Lilly stated that we need to get something out in a timely manner.

Vice Chair Chen stated that she understands the need for being non-incendiary and that the letter should include a discussion of the values permeating downward from city management, which is why we are addressing the letter to the Mayor.

The EDLC stated that Corporation Counsel, Donna Leong, never withdrew her comment that she has line item veto on our budget. We have tried to resolve this issue for months. A draft letter incorporating the EC's discussion will be created and sent to both Commissioner Lilly and to Vice Chair Chen for review and approval.

Commissioner Yuen asked who would be copied on the letter. The EDLC stated that it should include the Managing Director Shinn and Corporation Counsel Leong.

Deputy Kam stated that he had a sunshine law comment. Deputy Kam said that he did not interpret this agenda item "Fiscal Year 2014 budget expenditures," to turn into a broader policy fight between COR and the Ethics Commission albeit arising out of certain budget expenditures. Deputy Kam stated that there is a concern about how the item is framed here especially if it turns into an action, which it has become. Deputy Kam suggested that the Commission generate the letter as a result of an open session discussion for action, and issuance at the next meeting.

Deputy Kam further clarified that the sunshine law gives notice about what the item entails. The way the agenda item is described does not give COR notice. This is especially true because the agenda item "for discussion" has now turned into a motion to issue a letter to the Mayor.

The EDLC stated that his understanding of the sunshine law is that two things need to occur when there is an action that will occur that has not been previously listed on the agenda: 1) that it not affect the rights of the parties that are discussed; and 2) there has to be, in our case, a four vote to amend the agenda to add this motion to it. The EDLC stated that he does not believe that we are looking at individual rights because we are looking at the interaction between two agencies. Therefore, maybe it would be appropriate for the Commission to amend the agenda to include this for action.

Deputy Kam stated that he is willing to go along with the EDLC's suggestion, but wanted it noted in the minutes that he took issue with the way this item was described in the agenda. The EDLC stated that he appreciated the discussion. Deputy Kam agreed with the Commission amending the agenda to include an action item that would send a letter along the lines discussed.

Deputy Kam stated that this item should be put on the agenda next time to see what further discussion occurs at the next meeting.

Vice Chair Chen asked for a motion to amend the agenda in section IV. A. 3 to state: "For Action: Motion to Draft and Send a Letter to the Mayor to Address the Budget Concerns Along the Lines Discussed." Commissioner Lilly made a motion to that effect. Commissioner Silva seconded the motion. The motion passed unanimously.

Vice Chair Chen stated that now that the agenda has been amended, she called for another motion to draft a letter to Mayor Caldwell regarding the budget and policy decisions of the Ethics Commission and its relationship with Corporation Counsel. Commissioner Lilly made a motion to that effect. Commissioner Silva seconded the motion. The motion passed unanimously.

The EDLC stated that he wanted to discuss one further item regarding the contested case hearing, but was concerned that when Commissioner Yuen recuses himself there will not be enough votes for a quorum. Deputy Kam stated it would be allowed for the purpose to answer the question raised earlier in the meeting.

4. Facebook.

ALC Wong stated that there continues to be positive feedback from our Facebook viewers. We have received more than 130 "likes" or "followers" in just the week we had our "soft opening" and we believe it is driving more people to our Website. Vice Chair Chen, and Commissioners Lilly, Wong and Yuen's photos and bios have been posted. She encouraged the remaining commissioners to provide photos and bios to be published on the website.

5. Examples of Ethics Commission change and growth over the last year.

The EDLC wanted to remind the staff and Commission of the successes over the past year. The EDLC expressed staff's appreciation of the Commission's support and help finding workable solutions with COR. Over the past year the Commission:

- o Handled a record number of thorough and timely investigated complaints which resulted in issuing Notices of Alleged Violation or referral back to the departments for corrective action.
- o Increased staff's ability to work directly with the Administrative Services Officers in other departments.

- o Conducted our first significant contested hearing case under our revised EC rules of procedure which ensured due process for anyone who is alleged to be a subject of an ethics violation.
- o Initiated a large number of investigations of alleged preferential treatment in the complex area of procurement.
- o Is near completion (90%) of all 8,500 city officers and employees for training.
- o Developed regular working relations and cooperation with the FBI, Prosecuting Attorney's Office, State Ethics Commission and Campaign Spending Commission.

The EDLC stated that from his point of view, doing any one of the referenced successes in a year is a substantial feat. He reiterated his appreciation of the Commission's support.

Commissioner Lilly stated he is impressed by the quality, professionalism, and thoroughness of the staff. He stated that his firm partner (Ms. Ng) was an Ethics Commissioner when they first hired the EDLC and all she stated about bringing the EDLC aboard has proved true and the EC is fortunate to have the EDLC.

The EDLC stated that the ALC is an excellent attorney, Investigator Letha DeCaires is an uncanny investigator, and Legal Clerk Lisa Parker pulls us altogether. He further stated that the staff has been lucky to work with Deputy Geoff Kam. Staff would have liked to have permanently hired any of the previous 3 or 4 Po'okela interns if we could as well, but the EC doesn't have any allocated positions or space.

Chair Gall stated that the last item on the agenda has to do with interaction between the Commission and with COR and since he has recused himself, he turned the meeting over to Vice Chair Chen and left the room.

Commissioner Silva moved to enter into executive session. Commissioner Lilly seconded the motion. The motion passed unanimously.

Commissioner Yuen recused himself at 1:23 pm.

V. EXECUTIVE SESSION SUMMARY

- A. For Action: Request for a Motion to Approve the April 25, 2014 Executive Session Minutes.

Chair Gall asked for a motion to approve the April 25, 2014 Executive Session Minutes. Commissioner Lilly so moved. Commissioner Silva seconded the Motion. The Motion passed unanimously.

- B. For Action: Request for a Motion to Approve and Adopt an Addendum to the Hearing Officer's Report Regarding the Alleged Violations of RCH Sec. 11-104 Misuse of City position, by a Former City Officer.

Counsel for Complainant and Respondent had been notified that the Commission would take up this matter. Counsel for Respondent did not attend the meeting.

Chair Gall reminded the Commission that, at the March meeting, the Commission adopted the hearing officer's findings of facts and conclusions of law but the EC wanted to add: (1) that the appropriate agency needs to provide proper training to avoid this same type of problem occurring in the future; and (2) the standard of review that was referenced in the opinion is not the actual standard that the EC uses to determine an ethics violation. The Commission agreed to add language to the opinion to clarify that the standard was not one of good faith, but whether the party knew or should have known their conduct was a violation. Chair Gall stated that he was charged with working on that, and that he worked on it jointly with Deputy Kam.

Deputy Kam distributed a copy of the draft Advisory Opinion to Complainants (EDLC and ALC). Chair Gall asked the EDLC if he had any concerns about receiving the draft prior to the subject's attorney's review. The EDLC stated that he did not have that issue because the subject's attorney had been informed of the meeting and that this case had been listed on the agenda.

The ALC asked for a short recess so that Complainant could review the Advisory Opinion. Chair Gall called the meeting to recess at 12:09 pm. The meeting was reinstated at 12:16 pm.

The ALC stated that she had two non-substantive requests.

Chair Gall asked for a Motion to approve the advisory opinion incorporating ALC's requests and directing that Deputy Kam shall redact the Advisory Opinion before publication and issued in the normal course. Commissioner Lilly so moved. Commissioner Silva seconded the Motion. The Motion passed unanimously.

- C. For Action: Request for a Motion to Approve and Adopt Advisory Opinion No. 2014-03 Regarding Alleged Violations of RCH Sec. 11-102.1(e) and ROH Sec. 3-8.2(c) (Appearing Before a City Agency on Behalf of a Private Interest) by a City Employee.

Chair Gall provided a brief summary of the case.

Commissioner Lilly moved to approve and adopt the Advisory Opinion as drafted. Commissioner Silva seconded the Motion. The Motion passed unanimously.

Chair Gall stated that he would sign the advisory opinion before he leaves if it is available.

D. Request for a Motion to Find Probable Cause of a Violation of RCH Sec. 11-104 (Misuse of City Resources for Personal Benefit) by a City Employee.

The ALC provided a short background on this case. The EDLC stated that, previously, an almost identical complaint was received and investigated by the EC by EC attorney, Matt Viola, on the same parties. A letter was sent to the Department at that time, giving them recommendations to avoid further ethics complaints and violations. Apparently, the Department did little to prevent this situation from recurring. Therefore, staff would like to be clearer with the Department in an official advisory opinion.

After discussion, **Commissioner Yuen made a motion to find probable cause and to issue a revised Notice consistent with the recommendations made during the discussion. Vice Chair Chen seconded the motion. The motion was unanimously approved.**

Commissioner Lilly moved to return to Open Session. Commissioner Yuen seconded the motion. The motion passed unanimously.

V. EXECUTIVE SESSION

Commissioner Lilly asked about media recognition of a case. The EDLC responded that he has been very careful not to disclose any confidential information to the media to protect the individual's privacy interests.

Commissioner Lilly moved to exit executive session, return to open session, and adjourn the meeting. Commissioner Silva seconded the motion. The motion was passed unanimously.

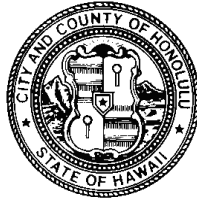
VI. ADJOURNMENT

The meeting was adjourned at approximately 1:27 pm.

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: June 26, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Katy Chen, Esq., Vice Chair
Michael A. Lilly, Esq., Commissioner
Stephen Silva, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
(except for Item V.C)
Laurie A. Wong, Associate Legal Counsel (ALC) (except for Item V.C)
Letha A. S. DeCaires, EC Investigator (except for Item V.C)
Geoffrey Kam, Deputy Corporation Counsel, COR
Diane Kawauchi, Deputy Corporation Counsel, COR
Catherine Maki, Administrative Services Officer, COR
Alia Wong, Reporter, Civil Beat
Dan Purcell, Interested Member of the Public
Jay Parasco, Managing Director's Office
[REDACTED], Respondent (Item V.B only)
[REDACTED], accompanying Respondent (Item V.B. only)

Excused: Charles W. Gall, Chair
Stanford Yuen, P.E., Commissioner

Absent: Rachael S. Wong, Dr.PH, Commissioner

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 481st meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:39 a.m. by Vice Chair Chen.

The Commission had before it the EDLC's memorandum regarding the Agenda Items for the June 26, 2014 Meeting, Open Session, dated June 20, 2014.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE MAY 30, 2014 MEETING

Vice Chair Chen asked for clarification to the minutes presented. EDLC stated that because there was movement in and out of Executive Session, he had directed the Legal Clerk to re-arrange the minutes by issue, instead of chronological order. To remedy the confusion, the minutes would be revised as follows:

1. Page 1, move, "Vice Chair Chen entered the meeting at 1230 p.m." to directly after "stenographer";
2. Page 4, state that Vice Chair was not present until 1230 p.m.;
3. Page 4, state that there had been a return to open session on the second paragraph from the bottom;
4. Page 8, "Chair Gall recused himself and left the meeting..." should be deleted;
5. Page 5, 3rd paragraph, amend to "Vice Chair asked about Chair Gall's recusal."
6. Page 5, 4th paragraph, change the last sentence to: "just leads to cases possibly being grieved by the same employees who are the subject of the investigations.";
7. Page 8, delete the term "thwarted" in Commissioner Lilly's statement – corrected statement should provide: "for want of a \$600 piece of equipment, they compromised an investigation that could have identified fraud, waste and abuse of a quarter of a million dollars."; and
8. Page 2, section III, paragraph 2, delete everything after 1130 a.m. as irrelevant.

Dan Purcell (member of the public), commended the Commission and staff for their work to stay up-to-date and accurate on their current meeting minutes. Mr. Purcell stated that he attends various other board meetings and many of the boards have significant delays in publishing their information which is irresponsible.

Commissioner Lilly moved that the minutes be accepted as corrected. Commissioner Silva seconded the motion. Commissioner Burroughs stated that since he was not present at the May meeting and would not vote. EDLC asked if Commissioner Burroughs had read the minutes. Commissioner Burroughs responded in the affirmative;

The EDLC stated that his review would validate his vote to approve the minutes. Commissioners voted unanimously to approve the corrected minutes.

III. OLD BUSINESS

The Commissioners discussed further dates for meetings and confirmed availability for hearing motions for a contested case on Wednesday, July 23, 2014 at 11:30 am.

Given that a contested hearing is scheduled for August 27, 2014 at 11:30 am, the Commission agreed that the next regular meeting should be held on, Wednesday, September 17, 2014 at 11:30 a.m. with the approval of the three missing commissioners.

IV. NEW BUSINESS

A. For Discussion: Administrative News. The EDLC requested that Investigator (Inv.) Letha DeCaires' investigator year-end report be added as an 8th item for New Business discussion. The Commission agreed.

1. Complaints and requests for advice statistics through last month. A new record, 103 investigative complaints have been opened.
2. Website statistics. (Please see Open Session Memo for statistics.)
3. Fiscal Year 2014 Year-end Report regarding Complaint Investigations. (Please see Open Session Memo for statistics.)
4. Administrative Service Officer Training Update. The EDLC explained that the intent for this specialized training for the ASOs is so that they can work more efficiently and effectively with EC staff for investigative purposes. Departments are required to follow, the "7 Steps of Just Cause" before taking any disciplinary action against employees. In order to prevent past unnecessary duplicative efforts by the EC staff and ASOs, the staff informed the ASO's that the EC investigation completes steps 1-5. The remaining steps 6 and 7 must be completed at the departmental level. Departments also have a responsibility to perform a due diligence review on our report. For example, the department should re-interview critical witnesses for concurrence, but they don't need to recreate the entire investigation as that would be a waste of resources. The EDLC reported that he has seen recent improvements in the EC staff communication with the ASOs.
5. Move to the Sprint Building located on Dillingham/Alakawa. The EDLC stated that the Ethics Commission office is on the top of the list of boards and commissions to move. The earliest date for the move is December 2014. EDLC voiced concern over the relocation due to physically moving the office, parking for commissioners, and public accessibility. The EDLC

stated that the administration has informed us that we can work with the architect in regard to designing a conference room that is large enough in size to accommodate members of the public, staff, and commissioners and can also be used as a hearing room for contested hearings.

Mr. Purcell, commented that he attends multiple state and city meetings full-time and he would be unable to attend an EC meeting if the EC were to move away from City Hall. He stated that the decrease in accessibility would be a disservice to the public. EDLC stated that he appreciates the comment because staff has made strenuous arguments to the administration that the EC should stay near Honolulu Hale for accessibility. Unlike other boards and commissions, the EC completes over 500 interviews of City employees a year. But, the concerns fell on deaf ears. EDLC stated that most of the boards and commissions (except Liquor Commission) will be housed at the Sprint Building. The main reason for the move is to save money.

6. Status of Corporation Counsel Legal Opinions to Ethics Commission. EDLC stated that there is only one outstanding legal opinion request regarding the basis of COR's claim to have budget authority over the Commission. Diane Kawauchi, Deputy Corporation Counsel, reported they are still working on the opinion as of two to three weeks ago.

7. Fiscal Years 2014 and 2015 Budget Update. We are trying to spend the remaining monies this month on equipment and outside services. Administration has stated that they will allow us to take this year's savings of \$25,000 and use it in our next year's budget for the ORI investigation. EDLC stated that he had asked for the flexibility to use that saved money on multiple investigations since at this time we are uncertain if we will utilize that whole amount on that one case, but were told that it could only be used for ORI. In FY15 we want to establish a Legal Clerk I position and fill that position as well as reallocate the current Investigator II to an Investigator IV position and create and fill the Associate EDLC. The EDLC explained that we had asked for another ALC and it was denied by COR, the Administration, and City Council.

8. Investigator Fiscal Year End Report. Inv. DeCaires stated that it has been her pleasure to work for the EC and staff who are all very professional. It has been a big year for cases investigated, a 16% increase from the previous year, likely due to the mandatory ethics training for all city employees and also having a dedicated investigator to respond to complaints promptly.

Some of the difficulties that occurred this year revolved around the filling of the investigator contract. The interviews for this job occurred in June 2013, a tentative job offer was provided to Inv. DeCaires by the end of June. But, the 89-day personal services contract was not approved until the end of August. Further, there were delays in the renewal of the contract. These contracts allow for retirees receiving a retirement pension from the ERS system to work without penalties. The reason that this position was filled in this method was because there were no qualified candidates for the civil service full-time position. Due to the delays, the contract which should have covered a 12 month period, was only filled for 9 months. The new FY15 contract has been approved and the hope is that this next year will result in more timely executions of the contract renewal process.

The current budgeted Investigator position is for a II, but the position actually requires skills at the level of an Investigator IV. Half of the 64 cases investigated and closed were complex cases, and half of the complex cases fit the definition of super complex investigations.

This job includes dealing with a large volume and a broad variety of cases in different departments; forensic analysis of electronic data, drafting lengthy investigative reports that include analytical review and synthesizing of material, and factual conclusions and recommendations.

In order to accommodate the increased staffing, the new space in the Sprint Building should be large enough to provide privacy to those meeting with the investigator. Currently, there is not enough room in the current location to adequately house an investigator and the voluminous documents that accompany complex cases.

The current method of intake and assignment of case numbers should be revised as it does not provide a realistic view of the actual cases investigated and resources used. When cases are received, the EDLC assigns it one case number. But, sometimes the investigation of one case results in three dozen interviews that had several different possible violations and additional subjects of investigations. Inv. DeCaires stated that she believes that multiple numbers could be assigned to help identify that the case involved multiple investigations, not just one.

The EDLC has often stated that the most similar investigator position in the city to the EC's investigator for the purposes of comparing work load volume is an HPD detective assigned to administrative investigations within the Internal Affairs Division (now known as the Professional Standards Office-PSO). HPD reported that the PSO investigators conduct 18 case investigations per year per detective. Inv. DeCaires reminded the Commission that she had just closed 64 investigations. Further, had she been able to work the allotted 12 months of the contract period, she would have likely completed over 80 investigations, the equivalent to that of four PSO investigators. It is important to note the case load comparison because of the potential for staff burnout is a big factor in an under-resourced office that performs ongoing complex administrative investigations. As such, having an appropriate amount of staffing is critical to the long term success of the EC office.

Commissioner Lilly stated that Inv. DeCaires is a "breath of fresh air" and that she has brought a wealth of expertise in law enforcement to the EC and that he is happy that she is here. EDLC added that the staff has learned so much from her. EDLC stated that if the EC doesn't have the right set of resources we are going to have other problems. Hopefully the move to the Sprint building will give staff more physical room and FY16 will be focused on the appropriate staffing needs.

Commissioner Silva commended Inv. DeCaires for keeping the cases active – no backlogs. Inv. DeCaires stated that she has thirty open super complex cases. EDLC stated that a

simple case is obviously easier to close, and just as the contested case before the commission, a super complex case takes more time to complete.

B. For Action: Review and Adoption of Draft Memorandum to Mayor Regarding Concerns with Corporation Counsel's Budget Authority Over Ethics Commission and Administration's Position Toward Commission.

EDLC reminded the Commission that this issue began last fall when Corporation Counsel, Donna Leong, stated that she had line item veto power over the EC budget. As a result, the EC formally requested COR's legal justification for that budget authority.

As discussed at the last meeting, EC staff encountered another issue when it recently requested approval for the purchase of a GPS tracking device to investigate substantiated allegations that involved misuse of City vehicles. After several weeks, COR eventually informed the EC staff that the purchase of the GPS was under review, because it had policy implications. Then 5 weeks later, staff received conditioned approval (Memo attached in Open 1).

EDLC recommended that the Commission should not direct him to sign COR's conditional approval memo, because COR did not provide any explanation of its concerns or why they are imposing conditions on the EC. EDLC stated that this is even more confusing since the EC has a legal opinion from COR about the legal use of GPS devices in investigations which staff has followed for this request.

Commissioner Lilly stated that he is appalled at the conditional memo from COR. He further summarily stated that: COR does not have the authority to oversee the EC; COR's authority ends with signing off on a budget request; to tell the EC that COR will only approve a budget request if there are a series of conditions imposed, COR is completely off base and overstepping authority. Commissioner Lilly likened COR's function to that of the State Attorney General. COR represents City employees and agencies. But, City agencies don't work for the Corporation Counsel. COR is now instructing the EC as to what they can or cannot do, as opposed to providing advice.

The EC asked staff to make the following revisions to the proposed letter including:

1. Add a second paragraph after, "...overstepped its limited authority and undermined the EC's independence," words to the effect: "The Ethics Commission is an independent agency which is only assigned to COR for administrative purposes. It is vital that the EC maintain its independence with the authority to conduct its investigations unimpeded by any agency of city government. Because we enforce the Ethics laws which govern the conduct of all city employees, this independence must remain inviolate." (Commissioner Lilly)

2. Change “best services” to “best ethics oversight.” (Commissioner Lilly).
Vice Chair added that it should include “of Honolulu employees.”
3. Page 2, first paragraph after the words, “had closed” add the following: “such investigations have very short windows of opportunity. Because the request was not timely approved, the investigation was compromised and for want of \$600 GPS, an investigation that could have identified fraud, waste and abuse of a quarter of a million dollars was thwarted.” (Commissioner Lilly)
4. Last line of the letter should include words to the effect: “We look forward to your confirmation of our independence and that we are not subjected to any oversight of any city agency of city government.” (Commissioner Lilly)
5. Include a time frame for a response i.e., ten days. (Vice Chair Chen)
6. Strengthen the very last paragraph of the letter to include words to the effect that the EC is looking to you, Mayor, for exhibiting the values in your own personal leadership to support the EC and to set an example for the rest of the administration. (Vice Chair Chen)
7. Page 2, section that includes the terms: “instead of mulling over policy implications,” should refer to the specific person using her exact responses to the EC. (Vice Chair Chen)
8. Page 2, cite to the COR legal opinion – including the exact date of the memo) that supports the sentence: “the purchase request was approved by COR.”
9. Page 2, reevaluate the entire paragraph to direct the reader – decrease the amount of detail to instead provide more impact. (Commissioner Burroughs)
10. Convey that summarily, COR’s memo to the EC is inappropriate because:
(1) it oversteps COR authority because the EC doesn’t work for COR; and (2) it is contrary to a COR opinion which authorized purchase of the GPS device.
(Commissioner Lilly)
11. Send a final draft directly to Vice Chair Chen for final approval and signature.
(Commissioner Lilly)

A short private discussion was held by Mr. Kam and Commissioner Lilly. The EDLC asked if the private discussion could be heard by all. Commissioner Lilly stated that it could be heard in Executive Session.

Commissioner Lilly moved to enter into Executive Session. Commissioner Silva seconded the motion. The motion passed unanimously and the Commission entered into

Executive Session for the purposes of consulting with Mr. Kam.

After discussion, Commissioner Lilly moved to exit Executive Session, Commissioner Burroughs seconded the motion. The motion was unanimously approved.

Commissioner Burroughs moved to direct the Ethics Commission staff to redraft the letter based on the comments at the meeting and to send the draft to Vice Chair Chen for approval and signature. Commissioner Silva seconded the motion. The motion was passed unanimously.

Deputy Corporation Counsel Diane Kawauchi introduced herself and COR Administrative Services Officer, Cathy Maki. Ms. Kawauchi stated that she was present at the EC meeting in November 2013 when the issue regarding the EC's budget was raised. Ms. Kawauchi stated that she would brief Ms. Leong on the issues discussed at this meeting and that she would hopefully have an opportunity to review the letter when it is issued from the EC to the Mayor. Ms. Kawauchi stated that COR is working as fast as they can to respond to the Commission. She further stated that in her heart she believes that COR is not seeking to be negligent or inattentive to the requests of the Commission. Ms. Kawauchi stated that she has the budget memo at this time and that it would be completed in the near future.

V. EXECUTIVE SESSION SUMMARY

Commissioner Burroughs moved to enter into Executive Session. Commissioner Silva seconded the motion. The motion was unanimously approved. The Commission entered into Executive Session to address the Executive Session Agenda Items.

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the May 30, 2014 Meeting.

After discussion, the Commission approved the Minutes as corrected.

- B. For Action: Request for a Motion to Approve and Adopt Settlement After Notice of Alleged Violation for Misuse of City Resources (RCH Sec. 11-104) Against a City Employee.

After hearing from Complainant and Respondent, the Commission unanimously approved the Motion to Settle.

- C. For Action: Request for a Motion to Approve and Adopt Advisory Opinion No. 2014-5 Regarding Misuse of City Resources (RCH Sec. 11-104) by a City Employee.

After consultation with Mr. Kam in which neither of the parties were present, the Commission reconvened and unanimously approved Advisory Opinion No. 2014-5.

VI. ADJOURNMENT

Commissioner Burroughs moved to exit Executive Session and adjourn the meeting. Commissioner Lilly seconded the motion. The motion passed unanimously.

The meeting adjourned at approximately 1:30 p.m.

July

NO MEETING

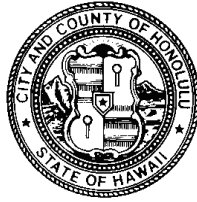
August

NO MEETING

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091 • AREA CODE 808 • PHONE: 768-7786 • FAX: 768-7768 • Internet: www.honolulu.gov/ethics

KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: September 17, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Michael A. Lilly, Esq., Commissioner
Stephen Silva, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, Commissioner
Hon. Riki Amano (ret.), Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Geoffrey Kam, Deputy Corporation Counsel, COR
Paul Aoki, First Deputy Corporation Counsel, COR
Catherine Maki, Administrative Services Officer (ASO), COR

Excused: Charles W. Gall, Esq., Chair
Katy Chen, Esq., Vice Chair

Stenographer: Lisa P. Parker, Legal Clerk III

I. CALL TO ORDER

The 482nd meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:39 a.m. by the EDLC as the Chair and Vice Chair were absent.

The Commission had before it the EDLC's memorandum regarding the Agenda Items for the September 17, 2014 Meeting, Open Session, dated September 10, 2014.

The EDLC explained that first, he wanted to express his gratitude to outgoing Commissioner and Vice Chair Rachael S. Wong for her service to the Commission and the community. The EDLC thanked Commissioner Lilly for accepting the Certificate on her behalf. The ALC presented the certificate to Commissioner Lilly who then read the Certificate for the record.

The EDLC also stated that he was pleased to introduce a new Commissioner, Judge Riki Amano who has already been of great assistance to the Commission even before her first official meeting.

The EDLC then asked for a Commissioner to voluntarily act as Chair of the Commission for the meeting as Chair Gall was out of town, and Vice Chair Chen was sick. Commissioner Lilly graciously accepted his nomination by the Commission and volunteered to act as Chair.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE JUNE 26, 2014 MEETING

Commissioner Yuen moved that the minutes be accepted. Commissioner Silva seconded the motion. Commissioners voted unanimously to approve the minutes.

III. OLD BUSINESS

The Commissioners agreed that the next meeting date would occur on October 29, 2014 at 11:30 am. The Commissioners then agreed to set a tentative meeting date on November 21, 2014 at 11:30 am.

IV. NEW BUSINESS

A. For Discussion: Administrative News.

1. Complaints and requests for advice statistics through last month. The EDLC stated that 105 investigative complaints have been opened which has been a 22% increase from the prior year. He attributed this to increased training and also having a dedicated investigator.

Commissioner Silva asked if staff was going to provide training for lobbyists. The EDLC responded that staff has been asked by attorneys who represent lobbyists from the contested case, if we would offer training for lobbyists. We may offer this training in November. Staff is trying to coordinate this training with the State Ethics Commission before the State Legislature starts its session in January 2015.

2. Website Statistics. (Please see Open Session Memo, Attachment OPEN-1 for statistics.)

3. Fiscal Year 2014 Year-End Statistics. (Please see Open Session Memo Attachment OPEN-1 for statistics.) The EDLC reported that he has not received an annual report back from COR at this time.

4. Fiscal Year 2016 Budget Request. The EDLC referred to Open Session memo attachment OPEN-2 which was a memo to Donna Leong, Corporation Counsel, from the EDLC dated September 9, 2014. He stated that he did receive budget approval for the Legal Clerk I position. Currently our former Po'okela intern, Darlene Nases, is filling the temporary position

until the permanent civil service position description is approved by the Department of Human Resources, and we can have the position open to the public for formal filling. In addition, the EDLC wanted to reallocate the current Investigator II position to a IV to ensure that the Commission has an investigator that is capable of handling complex and super complex cases. The EDLC stated that he is currently working on a position description for the Investigator IV position with Cathy Maki, ASO, for COR. The EDLC stated that the third position he is asking for is to create the Assistant EDLC position that would be responsible for some of the major cases and major policy recommendations and administration issues. He stated that the office has made the least progress on this position so far, but shall continue to work on it.

In regard to the location of the office, staff has not been informed of when we are going to be moved. Therefore, staff had to work with Ms. Maki to create two budgets: one if we stay in the current location, and the other if we move to the Sprint Building on Dillingham Boulevard.

Commissioner Silva asked for confirmation that the rent at the Sprint Building was half the price as the rent at the current location. The EDLC responded that it was his understanding, but has come to his attention that at the current location, we do not pay the common area maintenance fees (CAMF) but, at the Sprint Building we may have to pay the CAMF which would decrease considerably the savings for the city if we move.

The EDLC added that staff met with investigators and the Division Chief for the Department of the Attorney General, Criminal Investigation Division, yesterday. They informed us that each investigator investigates approximately 20 cases each year. This agrees with the amount of administrative investigations the HPD Professional Standards Office detectives investigate each year, which is 18. Therefore, our one investigator who investigates 105 cases this year is far beyond capacity, and the workload has taken its toll on staff. If staff could obtain a second investigator soon, they could be trained by our very experienced investigator.

Another item requested on the budget is the reallocation of the Legal Clerk III position to a Legal Clerk IV position. The justification for this reallocation is that the current Legal Clerk has an exceptionally busy work load, scheduling meetings and training, gathering and distributing meeting and training materials, news releases, advisory opinions, maintaining information from media, cabinet and council. The office also has 600 financial disclosures that need to be reviewed for completeness every year. In addition, the clerk must assist two busy attorneys. The EDLC believes that there would be an additional cost of \$3,900 to reallocate this position.

The EDLC also stated that our current office space is inadequate to house our current investigator. The ALC has been sharing her office with the interns for the last year so, that the Investigator can have a desk next to the Legal Clerk III. Now, Department of Community Services has been kind enough to let our investigator use one of their empty offices on the floor above. This way, the ALC has her office back.

Finally, the EDLC stated that he is asking for an additional ALC position, which means that the office would have three attorneys. The new attorney would either be a junior attorney hired full-time or an experienced attorney hired part-time. This position would cause the highest

increase in the budget from last year, up to 46%. The budget increase without this position is only about 20%. The EDLC explained his justification for the new attorney position. He stated that for the last two months, staff has only worked on one case – preparation for the contested case hearing that was set for August 27. Based on that, the office currently has about 90 outstanding complaints and requests for advice instead of approximately 45 which is the average. This backlog is due to having to exclusively work on one case for two months.

Commissioner Amano asked why the office used Westlaw for legal research purposes? She recommended that the staff use “Fast Case” which is a free service offered by the State Bar. She stated that this could save the office several thousand dollars which could mean the reallocation of the Legal Clerk position. The EDLC responded that the office followed COR’s standard contract with Westlaw, but we would look into “Fast Case” per her recommendation.

Commissioner Amano also stated that in regard to the contested case hearing that occurred on August 27, 2014, she was concerned about the process. She stated that “we are the Ethics Commission” and that the administrative process we use must be fair to everyone. She stated that the administrative process used for this past contested case hearing could not be replicated. She had concerns that the EDLC was also the prosecutor in the case and that the Legal Clerk was distributing documents and information to the Commissioners, while also supporting the prosecutor in the case. She stated that she was very uncomfortable with this administrative process. The EDLC responded that this is why Deputy Corporation Counsel Geoff Kam advises the Commission during contested cases where the EDLC has to be the prosecutor in this matter.

Commissioner Amano further stated that if a change in this administrative process is going to affect the budget, it needs to be addressed now. The administrative process should always remain the same.

Acting Chair Lilly stated that it is rare for the Commission to have to adjudicate at a contested case hearing, and this is the first one he has had to do since he has been on the Commission.

The EDLC stated that at the prior contested case hearing in October 2013, the office used a Hearing Officer. In the past, the office has also had a few other contested cases that only lasted about an hour and the Commissioners had adjudicated the matter. The EDLC didn’t believe that having the Hearing Officer was particularly helpful because the Commission still had to review the report and the evidence. The EDLC stated that he has talked about this issue with the Hawaii State Ethics Commission. They have a bigger staff of ten people and can split the staff into divisions: advisory and advocacy. But, we don’t have the same amount of staff, and are unable to do the same.

Commissioner Burroughs asked how other medium sized cities deal with this issue. The EDLC replied that he can ask the other cities how they deal with this. Commissioner Amano stated that she thought that speaking with the other cities is a good idea. She asked how the office handled the other contested cases that the EDLC mentioned.

The EDLC responded that, like in civil cases, most of our cases settle. Commissioner Burroughs added, that even if the cases settle, the preparation of the cases leading up to contested case hearing is the process that is at issue and settlement does not resolve the administrative process in the preparation of the case.

Commissioner Amano reiterated that the process shouldn't change no matter what. She stated that if she were a lawyer representing someone who was accused of an ethics law violation, she would need to know where she's supposed to file documents, and who is supposed to distribute documents to her. She stated that the process needs to be fair and transparent. Also, changes to the administrative process could affect the budget.

The EDLC stated that it was decided in the August 2014 contested case that the ALC would make the decision of having the Legal Clerk distribute documents because the ALC was not the lead attorney/prosecutor for the case. The office can start researching this now and even if we can't be prepared in time for this budget submission, we can always be prepared for the next budget submission.

Commissioner Amano stated that staff should consider that if we do not have enough resources to prosecute cases, then perhaps the prosecution needs to be outsourced. That way, the staff could concentrate on education, training and providing advice. This would impact the budget and it is something that needs to be addressed now. Commissioner Amano asked if the office has a Strategic Plan. The EDLC confirmed that the office does have a plan. The ALC confirmed that the Strategic Plan was not included in the Ethics Commissioners Resource Guide, but she would distribute it as another attachment for their reference.

Commissioner Burroughs asked the EDLC if in the past he has budgeted for a hearing officer, and the EDLC confirmed.

Acting Chair Lilly asked the EDLC to **prepare a report** for the Commissioners for the next meeting. The EDLC confirmed and stated that he appreciated Commissioner Amano's views as she had to deal with this situation immediately upon her confirmation as a Commissioner and due to her experience as a judge and mediator/arbitrator.

Acting Chair Lilly directed the discussion to conclude the agenda item related to the FY 2016 budget proposal. EDLC stated that the last item on the budget request was in regard to salaries. He stated that Ms. Donna Leong, Corporation Counsel, includes a limitation on the ALC's and EDLC's salaries. The ALC was supposed to receive \$78,996 in FY 2014. He was told that merit increases would be allowed for FY 15 if appropriate. At the beginning of FY 15, EDLC sent a memo to Ms. Leong stating that the ALC was entitled to a 4% merit increase for FY15. ALC has not received it. Now it appears that there is a new condition on the salaries.

Ms. Maki stated that there is a section in the Budget Guidelines in regard to salaries. In regard to merit increases, Ms. Leong says in staying with the Guidelines, she needs more information regarding calculations and justifications. As a rule of thumb, merit increases follow the collective bargaining increases of 4%.

Acting Chair Lilly asked if there was a percentage cap or if Ms. Leong just needed more justification.

Ms. Maki confirmed that COR is requesting further justification. She explained that this is the first time the city is doing a zero based budget. Now everyone has to justify every single line item. The city is using actual expenditures in FY 13 and 14 as a guide. Any expenses above that, the requesting agency needs to justify it in order to even get a fighting chance.

The EDLC told Ms. Maki that it would help if she could explain what she meant by more justification? Is the justification for COR or the Department of Budget and Fiscal Services? Ms. Maki explained that she will work with him on the upward review process.

Commissioner Amano asked if the EDLC had a copy of the "Budget Guidelines" that Ms. Leong was referring to. The EDLC responded yes, he does have a copy, but he is not sure if he understands the Guidelines. The EDLC stated that he believes he provided proper justification for another investigator by showing the increase in complaints and comparison of the other administrative investigator workloads that we need more resources there.

Commissioner Amano stated that she thinks the justifications need to be figured out between Ms. Leong and the EDLC. She further stated that the Commission's budget needs to start at the bottom in line with the Guidelines. The EDLC stated that even COR agrees that some of the Guidelines are impractical, for example, you cannot get a new position unless you get rid of an old position. But how can that be if the work load is increasing? The EDLC stated that COR is not saying that you "can't do it," it's just that the request needs to be justified.

Commissioner Amano stated that COR is an accommodating agency to us as the EC is not part of COR. She further stated that she does not want to deal with budget in a piece meal fashion and that the EDLC needs to create a budget that aligns with the guidelines, then makes a justification for the exceptions to the guidelines.

Commissioner Silva added that the justifications should include that the Commission is trying to alleviate unreasonable spending by enforcing the city's ethics laws, and the EC needs to include a dollar amount to justify that. Commissioner Amano confirmed.

Acting Chair Lilly asked Ms. Maki for confirmation that the 4% on the staff salary increase, mentioned in the memo, was not a cap, and that if the EC can justify it, the employees can get the raise?

Ms. Maki confirmed, "yes."

5. Annual Performance Appraisal for the EDLC. The EDLC stated that he was reminding the Commissioners to complete his evaluation by September 26, 2014 as he does not want to ask for a raise without getting feedback from the Commissioners. The EDLC instructed the Commissioners to return the evaluation to the Legal Clerk. **Commissioner Burroughs requested that the evaluation be sent as a Word document.**

6. Status of Corporation Counsel Legal Opinions to Ethics Commission. The EDLC stated that there is only one outstanding legal opinion request regarding the basis of COR's claim to have budget authority over the Commission. The EDLC stated that he has talked to the Deputy Corporation Counsel responsible for this memo and she stated that they are still working on the opinion and hopes to get it to us by the next meeting.

7. COGEL Conference. The EDLC explained that "COGEL" (Council of Government Ethics Laws) only has this one annual conference. He referred to the agenda (attached as OPEN-5 to the Open Session Memo) for this year's conference to be held in Pittsburgh in December. He stated that the Commission has no money budgeted to send anyone to COGEL. So they need to justify why they should pay to send someone by taking money from another account to pay for COGEL. He stated that the estimated cost of one person attending is approximately \$2,200 including roundtrip airfare, registration, and lodging. The EDLC stated that the difficulty with the COGEL Conference is that it is created for two audiences: The staff who wants to know the nuts and bolts of how things work, and the commissioners who are more interested from a policy perspective. This agenda for the conference this year showed courses that didn't seem to address either approach. The EDLC stated that the Commission has never sent a Commissioner at the end of their term, but that was the only restriction. He asked if any Commissioners were interested in attending the annual COGEL conference.

The EDLC also stated that the Commission is also an associate member of the Society of Corporate Compliance and Ethics. We need money to join as a full member. Based on the Federal Sentencing Guidelines, many corporations have started their own ethics and compliance programs over the last 15 years. Even though government used to be the leader in ethics, corporations have now taken the lead.

The EDLC continued that the corporate compliance conference agenda shows that they are able to get the best people in the country to make presentations. Instead of sending someone to COGEL, we could send a staff member to the Compliance and Ethics Institute conference instead. It would cost about \$500 more to send someone to this conference. He asked the Commissioners for their opinions.

Commissioner Yuen asked if the corporate compliance organization had any other offered trainings besides the annual training.

The EDLC responded that COGEL only had an annual training, but the Corporate Compliance group had regional trainings four times a year and an annual national conference. The COGEL conference is all based on volunteers because they don't have any money. The EDLC recommends the COGEL conference to the Commissioners. But, he believes that the ALC is past the point where she would receive any real benefit from attending the COGEL conference as she has been in the office for four years now.

Commissioner Yuen recommended that the ALC attend the conference. Commissioner Silva agreed that the ALC should attend a conference, but especially the Corporate Compliance conference. Commissioner Burroughs added that perhaps a regional training from the Corporate Compliance group may be cheaper, and that he believes that going to the corporate training

would be beneficial as the COGEL conference agenda did not look very helpful. Commissioner Silva added that since the office has been asked to provide lobbyists with training, and that since the lobbyists come from the private sector, then the ALC should attend the private sector conference. Commissioner Lilly stated that he concurred with the comments.

Commissioner Amano stated that she did not yet know enough about what staff did, but she supported attending the conference as a lot of the values of attending a conference are not in the agenda such as: networking, starting dialogues with other agencies and sharing information.

As this topic was being wrapped up, the EDLC asked if the Commissioners preferred to review documents provided by staff double-spaced or single-spaced. The Commissioners agreed that either way was amenable to them.

B. For Action: Letter from Mayor Caldwell in Response to Letter from Vice Chair Chen Regarding Concerns with Corporation Counsel's Budget Authority over Ethics Commission and Administration's Position Toward Commission.

The EDLC reminded the Commissioners that in July 2014, Vice Chair Chen sent a memo to Mayor Caldwell. The Mayor responded with a memo in August 2014 supporting the Commission's decisional independence. But, the memo indicates that COR's role in the Commission's budget will not change. The Mayor is also firm in his support of COR providing ethics advice to cabinet members. He stated that the Commission and COR need to work together to resolve the GPS situation. The EDLC continued, that he was not comfortable signing COR's June 2014 memo asking for the Commission to agree to certain conditions because the memo was very general. He stated that we can try to determine what the conditions are either formally or informally. Basically the Commission is back to where it was last Summer in regard to purchasing the GPS tracking system. The EDLC confirmed that he asked for it in the FY16 budget.

Acting Chair Lilly stated that he thought Vice Chair Chen needs to comment on the Mayor's memo before the Commission responds to it. He also stated that he was concerned that if COR had been cooperative, then the Commission would not have waited so many weeks until it was too late to investigate the complaint. He added that cooperation is a two-way street and that COR did not cooperate with us. He stated that he was disappointed in the Mayor's memo. He inquired about the Mayor asking about the Commission obtaining consent to use the device from the Department whose employee was the subject of the complaint. The EDLC explained that he did ask for and was granted permission by the Department Director.

Acting Chair Lilly stated that he wants to make a strong response to COR and that he wants to wait for Vice Chair Chen to weigh in on the issue. He wants to inform them that the Commission is being cooperative and that they want everyone else to be cooperative as well.

Commissioner Silva added that he didn't see what the problem was in regard to the GPS because all businesses have GPS tracking devices on their vehicles. Commissioner Burroughs added that even the vehicles at his university has the devices as well. The EDLC stated that he is

just trying to obtain GPS devices for City vehicles to determine if they are being used for work on City time.

Commissioner Amano asked if the Commission had responded to COR's memo from June 2014. The EDLC replied that he has emailed Ms. Leong a response. Commissioner Burroughs asked why Ms. Leong wants us to confer with the unions and that conferral seems like a requirement. The EDLC replied that conferring with the unions is a condition of approval.

Commissioner Amano stated that she was concerned about the timing issues in regard to the Mayor's memo also. She didn't think that the Commission should wait for two months to respond. She is inclined to have the response be short and sweet. She wants to keep the response simple. Something to the effect of: "Thank you for your interest in these issues. We are encouraging further discussion along the lines of your budget mandate and are working cooperatively with COR in order to better comply with your directive." In regard to the GPS issue, she suggested that one Commissioner be assigned to address the issue and if they reject it, we move on.

In regard to the last issue about giving ethics advice, Commissioner Amano stated that the office has enough work on its hands. She stated that she didn't have "pride of ownership" on the expertise. In her opinion, if she were a cabinet member, she would want to get advice from the expert. From our standpoint, she doesn't care, because she already knows that the office is the "best in the business." She offered some language: "With respect to you, Mayor, we will respect your opinion, but our doors are open to provide advice." Commissioner Amano stated that the response should be a one page memo. She stated that she doesn't like to fight about manini stuff and that she does not know why we are fighting.

The EDLC stated that **staff can draft a response** if the Commissioners were comfortable with that.

Commissioner Yuen stated that we could add that we look forward to working with you (Mayor) on these issues. Commissioner Amano nominated Acting Chair Lilly to be the point person to address the GPS issue. Acting Chair Lilly kindly volunteered for the position and confirmed that if there were instances where the EDLC felt that Commissioner Lilly's presence would be beneficial, to let him know so he could attend.

Acting Chair Lilly asked for a Motion for staff to draft a memo in response to the Mayor and submit it to Vice Chair Chen to review and sign the memo. Commissioner Yuen so moved. Commissioner Burroughs seconded the motion. The motion passed unanimously.

V. EXECUTIVE SESSION SUMMARY

Commissioner Silva moved to enter into Executive Session. Commissioner Amano seconded the motion. The motion was unanimously approved. The Commission entered into Executive Session to address the Executive Session Agenda Items.

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the June 26, 2014 Meeting.

Commissioner Burroughs moved to approve the minutes. Commissioner Silva seconded the motion. The motion passed unanimously.

At 1:15 pm Commissioner Yuen recused himself from the meeting and left the room.

- B. For Action: Request for a Motion to Approve and Adopt Commission Staff's Proposed Advisory Opinion No. 2014-6 Regarding Violations of the Standards of Conduct by a Former City Officer.

After discussion, Commissioner Burroughs moved to approve and adopt Advisory Opinion No. 2014-6 with revisions per discussion. Commissioner Silva seconded the motion. The motion passed unanimously.

VI. ADJOURNMENT

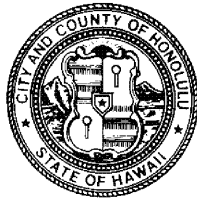
Commissioner Burroughs moved to exit Executive Session and adjourn the meeting. Commissioner Silva seconded the motion. The motion passed unanimously.

The meeting adjourned at approximately 1:30 p.m.

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: October 27, 2014
 Standard Financial Plaza
 Conference Room, Suite 211

Present: Michael A. Lilly, Esq., Commissioner (Acting Chair)
 Stephen Silva, Commissioner
 Jeffrey Burroughs, Ph.D., Commissioner
 Stanford Yuen, Commissioner
 Charles W. Totto, Executive Director and Legal Counsel (EDLC)
 Laurie A. Wong, Associate Legal Counsel (ALC)
 Geoffrey Kam, Deputy Corporation Counsel, Department of the
 Corporation Counsel (COR)
 Donna Leong, Corporation Counsel, COR
 Catherine Maki, Administrative Services Officer (ASO), COR
 Lila Tom, Chief, Classification and Pay Division, Department of Human
 Resources (DHR)
 Jay Parasco, Staff, Mayor's Office
 Francisco Figueiredo, Staff, Office of Councilmember (CM) Ikaika
 Anderson
 Sophie Cocke, Civil Beat
 Gordon Pang, Star Advertiser

Excused: Charles W. Gall, Esq., Chair
 Katy Chen, Esq., Vice Chair
 Hon. Riki Amano (ret.), Commissioner

Stenographer: Lisa P. Parker, Legal Clerk III

I. CALL TO ORDER

The 483rd meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:39 a.m. by the EDLC as the Chair and Vice Chair were absent.

The Commission had before it the EDLC's memorandum regarding the Agenda Items for the October 27, 2014 Meeting, Open Session, dated October 22, 2014.

The EDLC explained that he wanted to express his gratitude to former Po'okela Intern and Legal Clerk I, Darlene Nases, for her hard work. October 31, 2014 will be her last day. The Commission and staff wish her well in her new job.

The EDLC then asked for a Commissioner to voluntarily act as Chair of the Commission for the meeting as Chair Gall and Vice Chair Chen were absent. Commissioner Lilly graciously accepted his nomination by the Commission and volunteered to act as Chair.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE SEPTEMBER 17, 2014 MEETING

Commissioner Yuen moved that the minutes be accepted. Commissioner Silva seconded the motion. Commissioners voted unanimously to approve the minutes.

III. OLD BUSINESS

The Commissioners agreed that the next meeting date would occur on November 21, 2014 at 11:30 am. The Commissioners then agreed to set tentative meeting dates on Tuesday, December 16, 2014; Wednesday, January 21, 2015; and Wednesday, February 18, 2015, all at 11:30 am. The EDLC explained that Commissioner Amano requested that meetings be set earlier for planning purposes.

IV. NEW BUSINESS

A. For Discussion: Administrative News.

1. Complaints and requests for advice statistics through last month. The EDLC referred to his Open Session memo dated October 22, 2014.

2. Website Statistics. The EDLC referred to his Open Session memo dated October 22, 2014.

3. Status of Corporation Counsel Legal Opinions to Ethics Commission Regarding COR's Budget Authority. The EDLC stated that there is only one outstanding legal opinion request regarding the basis of COR's claim to have budget authority over the Commission. Ms. Donna Leong, Corporation Counsel, stated that the opinion is in its final stages and that the author is currently out of town on vacation. She expects the opinion to be finalized next week and will be sent via the staff. She stated that she thinks that the Commission will find it "illuminating" and that it gives a full context to answer to the question. She thanked the Commission for their patience.

4. Status of Filling the Legal Clerk I Position; Reallocating the Investigator II to an Investigator IV, and Creating and Filling an Assistant EDLC Position. The EDLC explained that the Legal Clerk I position has been advertised through the EC website, Facebook, and through Craig's List. Staff has interviewed some candidates and there are a few that were well qualified, but it is unknown whether they will accept the position because of the low salary as they have received offers for higher pay. We may have to ask DHR if we are able to hire someone at a higher than entry level pay. We may be able to increase the amount of pay for the FY16 budget. The EDLC stated that he was aware that Ms. Lila Tom, Chief, Division of Pay and Classification, DHR, had a concern about the Commission's request for an Investigator IV because that position needs to supervise another Investigator, which we do not have. An Investigator III does complex case work like our Investigator II. The EDLC also stated that he is working with DHR regarding the Assistant EDLC position.

5. Status of GPS Tracking System. The EDLC stated that staff has received approval to purchase the GPS from COR and that the GPS is being purchased. After staff receives approval from the Department head and COR to use the GPS, staff will move forward.

6. Eform Financial Disclosure Filing System. The ALC stated that staff has implemented a mandatory Financial Disclosure eform that all city employees must use. This will minimize the staff's workload of having to track and file several hundreds of paper forms. Commissioner Yuen asked why department heads can't be more responsible for their employees turning in the form. The EDLC responded that when employees are delinquent in turning in their forms, staff sends a letter to the administrative and the legislative branches informing them which employees are delinquent and requesting that they instruct the employee to file the form.

7. Ethics Survey of City Employees. The ALC reported that the last time a survey was conducted was in 2008-2010. The paper survey results were tabulated by a former Po'okela intern. It is time to acquire new data in order to understand the employees feelings about the ethical culture of the city and the Ethics Commission's performance. The ALC made the Commission's existing paper survey in electronic form using "Surveygizmo," a web-based software program that automatically calculates data and provides reports. The ALC provided the Commissioners with a binder of the 2008-2010 survey results, a preliminary report of the current survey results, and a copy of the survey questions. Commissioners Lilly and Burroughs stated that they thought the ALC did a good job on the survey. Commissioner Burroughs asked if the Commission would be provided with the final report. The ALC responded that she planned to post the final report online, on the Commission's webpage, and will also provide the Commissioners with the final report at the next meeting.

8. Ethics Conference Attendance. The ALC reported that she had spoken to a colleague who attended the proposed Society of Compliance and Ethics conference and that the colleague stated that she believed it may be too basic for the ALC to attend. The ALC stated that she believed it would not be fiscally prudent at this time to attend the conference since it is even more expensive than the traditional COGEL conference that staff has attended in the past. The ALC stated that they will continue to look into other continuing ethics and compliance education options and conferences.

9. Public Responses to Advisory Opinion No. 2014-6 Regarding Romy Cachola. The EDLC reported that staff has received kudos from others in government. The Advisory Opinion helps people to generally trust that the city can look into solving its own problems. The EDLC stated that he received a lot of questions and the comments received were less radical than

usual. The EDLC stated that Richard Borreca, columnist for the Star Advertiser, informed him that he appreciated the depth of the Advisory Opinion as it gave him a greater understanding and context for the opinion. Mr. Borreca wrote a very good article on this issue. He was concerned that Mr. Cachola threw other councilmembers under the bus instead of apologizing to his family and constituents. The EDLC recalled that the CM Cachola case reminded him of former CM Rene Mansho's case in which despite overwhelming evidence, she would not admit doing anything wrong.

Commissioner Lilly stated that a lot of his friends and relatives commented positively in support of what the Commission did. He asked what was the Commission's next largest fine before this. The EDLC responded that it was the \$6,500 fine against former CM Nestor Garcia. The EDLC stated that the two cases were very different; as soon as CM Garcia received the Notice of Alleged Violation, he and his attorney came to see the EDLC and worked out a settlement. CM Garcia admitted his mistakes. The EDLC stated that the \$50,000 fine imposed on former CM Cachola is one of the highest fines nationwide of a politician. Although some fines are higher for campaign finance problems.

10. Communication with Administration Regarding Corporation Counsel's Budget Authority Over the Ethics Commission. The EDLC reported that Vice Chair Chen approved the response, but she was not sure if the response really addressed the Commission's concerns. Commissioner Lilly reviewed the approved response and confirmed that it was consistent with the Commission's discussion last month. The Commission unanimously agreed that the response was ready to be sent out.

- B. For Action: Request for a Motion to Adopt Staff's FY 2016 Budget Request.
- C. For Action: Request for a Motion to Adopt Staff Recommendations Regarding the FY 2015 Salaries for the EDLC and ALC.
- D. For Action: Request for a Motion to Justify the FY 2016 Base Salaries Budget for the EDLC and ALC.

The EDLC requested to discuss agenda items B, C, and D together.

The EDLC explained that in regard to item B, the attachments to his Open Session Memo, 1-4, were copies of what was sent to the Department of Budget and Fiscal Services ('BFS') as the Commission's budget request.

He stated that in regard to item C, there is a timing issue that Fiscal Services has explained to staff. Since the EDLC and ALC salaries are not tied to a bargaining unit increase, by the time the Commission approves a raise, there are no budgeted funds available because the budget is set two years prior. The salaries of the EDLC and ALC are therefore always a year behind because

the proper increase was not budgeted for the future years. The proper amounts need to be budgeted in advance so that the EDLC and ALC will have the required funding.

In regard to item D, the EDLC passed out several documents showing statistics. He stated that in the past, staff has investigated an average of 89 cases, but this year, the number of cases has increased to 107. The EDLC stated that in comparison, the Honolulu Police Department Professional Standards Office administrative detectives only investigate about 18 cases per year. Also, the Attorney General assigns only about 20-30 administrative cases per investigator. These comparisons indicate that the Commission needs another investigator.

The EDLC referred to attachment OPEN-1 of his Open Session memo. He stated that this list is in order of priorities of major issues that he is presenting to the administration. The asterisk indicates the FY16 salaries which are the most complex calculations. He explained that his FY14-16 chart helps explain two issues in regard to the ALC's salary (as an example): (1) Justification for the salary increase; and (2) salary increase history. He stated that on June 30, 2014, he completed his evaluation of the ALC; the ALC received high marks. He thought she would be eligible for a merit increase, so he authorized her raise. But there were no funds budgeted for a merit raise. Therefore, the Commission needs to use salary savings from not having a Legal Clerk I, and not having an Investigator IV for several months to pay for the ALC's allotted merit raise.

BFS Fiscal Division says they will determine if there are any other savings available to pay the ALC \$82,140. Regardless, the ALC's base salary for budget purposes for FY16 should be \$82,140. This does not mean that any additional FY 16 salary increase/adjustment will be paid, but the \$82,140 needs to be put down as a base salary in the budget, otherwise the ALC will continue to not have sufficient budgeted salary funds. It is his understanding that COR budgets a 4% merit increase for each deputy.

Commissioner Yuen asked if the staff has used FY 2014 salary savings to pay for the raise, and could the FY 2015 salary savings be used? He asked if there is a carry-over of savings to the next year. The EDLC responded, that the Commission needs to get past always using salary savings for merit increases, that is why the Commission needs to budget for appropriate merit increases.

The EDLC explained further handouts depicting charts. Commissioner Lilly asked if the recommendation in agenda item B is to move and adopt the FY 2016 budget request, as it seems like item B encompasses agenda item D which is also a restatement of agenda item C. The EDLC responded that he was using a "belt and suspenders" approach.

Commissioner Yuen stated that he always believes in equal pay for equal work, especially for employees working in the same department. Commissioner Yuen stated that he had no problems with approving the discussed agenda items.

Commissioner Burroughs moved to approve and adopt the recommendations for agenda item B. Commissioner Silva seconded the motion. The motion passed unanimously.

Commissioner Burroughs moved to approve and adopt agenda item C. Commissioner Yuen seconded the motion. The motion passed unanimously.

Commissioner Lilly asked if the EDLC needed item D approved. The EDLC stated that it would be helpful if approved. **Commissioner Burroughs moved to approve and adopt agenda item D. Commissioner Silva seconded the motion. The motion passed unanimously.**

Commissioner Lilly stated that from his standpoint, the EDLC and ALC are worth more than these pay levels. He wished he could pay them more. When comparing the work we do with the deputy attorney generals (as he was the Attorney General and with the department for many years), he believes that the EDLC does more than a division head. Commissioner Lilly stated that the EDLC is running a department; has a huge workload; and has an office that is understaffed and underpaid. This salary is the very minimum of what the EDLC should get paid. The EDLC stated that we are going to work with Cathy Maki, Administrative Services Officer, COR, earlier in the fiscal year so we won't have these timing issues in the future. He further stated that he appreciates the Commission's review and decision of the budget items, as the Budget Department needed any other changes submitted today.

V. EXECUTIVE SESSION SUMMARY

Commissioner Silva moved to enter into Executive Session. Commissioner Yuen seconded the motion. The motion was unanimously approved. The Commission entered into Executive Session to address the Executive Session Agenda Items.

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the September 17, 2014 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

Commissioner Burroughs moved to approve the minutes. Commissioner Silva seconded the motion. The motion couldn't be passed because there was no quorum as Commissioner Yuen was recused from the prior meeting. The motion was tabled until the next meeting.

- B. For Discussion: Request for Advice – Does a City Officer have a Conflict of Interest such that he/she Must Recuse himself/herself from Evaluating a Subordinate Employee? (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

After discussion, **Commissioner Yuen moved to approve staff to draft a formal advisory opinion consistent with the EC's discussion for their review at the next meeting. Commissioner Silva seconded the motion. The motion passed unanimously.**

- C. For Discussion: Work Performance Evaluation for the EDLC. (HRS Secs. 92-5(a)(2) and (a)(8))

The EDLC thanked the Commissioners for their feedback and addressed an issue that was raised.

D. For Action: Request for a Motion to Increase the FY 2015 Salary for the EDLC with Conditions. (HRS Secs. 92-5(a)(2) and (a)(8))

Commissioner Lilly asked for a motion for a formal recommendation on a salary increase. **Commissioner Burroughs moved to approve the recommendation on a salary increase for the EDLC. Commissioner Silva seconded the motion. The motion passed unanimously.**

VI. ADJOURNMENT

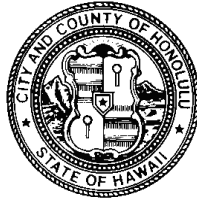
Commissioner Burroughs moved to exit Executive Session and adjourn the meeting. Commissioner Silva seconded the motion. The motion passed unanimously.

The meeting adjourned at approximately 1:30 p.m.

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: November 21, 2014
Standard Financial Plaza
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chair
Katy Chen, Esq., Vice Chair
Michael A. Lilly, Esq., Commissioner
Stephen Silva, Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, Commissioner
Hon. Riki Amano (ret.), Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha A.S. DeCaires, Investigator
Geoffrey Kam, Deputy Corporation Counsel, Department of the
Corporation Counsel (COR)

Stenographer: Lisa P. Parker, Legal Clerk III

I. CALL TO ORDER

The 484th meeting of the Ethics Commission ("Commission" or "EC") was called to order at approximately 11:40 a.m. by Chair Gall.

The Commission had before it the EDLC's memorandum regarding the Agenda Items for the November 21, 2014 Meeting, Open Session, dated November 14, 2014.

**II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSION OF THE OCTOBER 27, 2014 MEETING**

Commissioner Silva moved that the Minutes be accepted. Commissioner Yuen seconded the motion. The Commissioners voted unanimously to approve the Minutes.

III. OLD BUSINESS

The Commissioners agreed that the next meeting date would occur on Tuesday, December 16, 2014. The Commissioners further confirmed tentative meeting dates for the following: Wednesday, January 21, 2015; Wednesday, February 18, 2015; and Wednesday, March 18, 2015; all at 11:30 am.

IV. NEW BUSINESS

A. For Discussion: Administrative News.

1. Complaints and requests for advice statistics through last month. The ALC referred to the Open Session memo dated November 14, 2014 and noted that she had added a new column to show the change from the prior month.

2. Website Statistics. The ALC referred to the Open Session memo dated November 14, 2014.

3. Status of Corporation Counsel Legal Opinions to Ethics Commission Regarding COR's Budget Authority. The ALC explained that staff had just received COR's legal opinion in regard to this matter the morning of the meeting. Commissioners were provided copies of the opinion for their review. The ALC stated that a discussion of the opinion would be placed on the agenda for the next meeting. Chair Gall asked the EDLC whether he should recuse himself from this matter. The EDLC stated that he would have to get back to him, but for now, the EDLC confirmed that he should recuse himself. Chair Gall returned the COR opinion without viewing it.

4. Status of Filling the Legal Clerk I Position; Reallocating the Investigator II to an Investigator IV, and Creating and Filling an Assistant EDLC Position. The ALC explained that the EDLC had extended an offer for Legal Clerk I to Kristine Bigornia and that she accepted the offer and is being processed by Cathy Maki, Administrative Services Officer, COR.

5. Status of Strategic and/or Operating Plan for Fiscal Years 2016-2019. The ALC stated that in response to a request from the Commissioners to review the Strategic/Operating Plan, she had attached a working draft to the Open Session Memo. She stated that staff was waiting to use the survey results in order to update the Plan, but due to a Union complaint alleging that the Commission needed to meet and consult with them, all work on the survey has stopped. The ALC stated that she sent a request for legal advice to COR asking about the Commission's obligations to meet and consult with the Union about the survey under the statute cited by the Union. The ALC stated that based on her preliminary reading of the cited statute, it did not appear that the Commission was required to consult with the Union because the Commission was not implementing any new policy that would change personnel relations. Commissioner Silva added that he believed that the survey was to set forth our goals.

Vice Chair Chen asked when the last survey had been conducted. The EDLC stated that from 2004-2010 the Commission had administered thousands of surveys to managers and supervisors at the training sessions who were union members, both UPW and HGEA. No-one had ever complained about it. Vice Chair Chen asked if the current survey questions were similar to the ones in the past. The EDLC responded that they were similar and simpler.

The EDLC stated that he reviewed the HGEA collective bargaining agreement, and it stated that a meet and consult is required if the employer is implementing any major policy change affecting employer employee relations. EDLC stated that's not what we are looking for. ALC confirmed they received 1500 surveys. Vice Chair Chen asked what the status of the survey is now. The ALC stated that she was instructed not to use or publish the survey results until this issue with the union is resolved.

Vice Chair Chen asked if the purpose of the survey was sent out at the same time as the survey. The ALC confirmed that it was and explained the process that was used to distribute the survey, with an email that explained its purpose.

Commissioner Amano asked what was the survey needed for. Commissioner Silva responded that it was to set goals for the future. The ALC agreed that she wanted to find out, what do people in the City think about the Commission, how can the Commission improve, and what was the ethical temperature/culture of the City.

Commissioner Amano asked if staff had a draft plan for FY16? The ALC stated that the working draft plan was provided in OPEN-1. She further stated that the plan is a working document and that a lot of things changed since the document was drafted. For instance, the Commission had initially set goals to establish anti-retaliation legislation and to create an anti-retaliation page on the Commission's website. But, after reviewing the survey results, we determined that the reason that people do not report ethics violations is not because they are afraid of retaliation, it is because they think nothing will happen if they report it, or they do not know where to report it to. Therefore, the feedback from the survey allows the Commission to set or change priorities. The ALC wanted to update the operating plan based on the survey.

Commissioner Amano asked if it is for the future operating plan. The EDLC and ALC stated it was for a FY 16-19 plan. Commissioner Amano stated that we have to pick and choose our battles – everyone is attacking us. She stated that she was not afraid of fighting, but the Commission has a small staff, and a discrete job to do, so the Commission just needs to do its job. She stated that she feels like we should back off; that the survey is not that big a deal; and since we are not into 2016, we have time to methodically review our existing plan, to determine how important was the survey. If the Commission feels that the survey is important, then we meet with the Department of Human Resources and the Unions to see if they have objections. The EDLC stated that it is exactly what they want us to do. He further stated that it is not a fight; staff is asking COR for an opinion. Commissioner Amano stated that she was referring to the union letter. The EDLC confirmed his understanding and reiterated that there is no big brewing battle. We are asking for a legal opinion if we have a legal duty. The EDLC stated that no one has ever brought this up in the past. Chair Gall stated that, at this point, we have sent out a request for legal advice.

Commissioner Amano continued stating that she does not think the the mini-battles for no reasons were worthwhile. She stated that she is here to do the work of the Commission. The EDLC stated that the best practices for ethics programs are to obtain survey results from constituents. He continued that this survey is just a small part of what staff is doing. Commissioner Amano replied that she knows that this is not what staff is doing and that was her concern.

6. Board and Commission Member Mandatory Ethics Training New Dates: December 11 and 15, 2014. The ALC confirmed the training dates, and let them know there is a maximum of 50 people that can fit in the Mayor's Conference Room. The ALC also offered a specialized training for the Commissioners that would have more specific hypotheticals. Chair Gall stated that the specialized training would be appropriate for the Commissioners since they are in a specialized position. Commissioner Burroughs mentioned that since there are new commissioners coming on board, that perhaps the special training should be scheduled in January. Commissioner Amano stated that she preferred to attend the public training. Chair Gall asked if he had an obligation to attend even if he is leaving the Commission? The EDLC confirmed – No.

Vice Chair Chen asked if there would be an issue if some Commissioners attended the public training instead of the specific training for the Commissioners. The EDLC stated that we will cover the same general materials, but there will be specialized hypotheticals for the specific training. Vice Chair Chen asked if it would be problematic if the EDLC talks about specific issues to Commissioners only at the special training, and the Commissioners that don't attend the special training wouldn't know about it. Commissioner Amano stated that she will attend both training sessions and that she wanted to see what is provided in the public training session, she stated that she is new and will attend any training.

B. For Discussion: Should the Commission Adopt a Formal Policy for News Releases?

Commissioner Amano stated that she wanted the Commission to consider this issue and although she didn't attend the prior meetings, she appreciated the deference that the issue is on the agenda now. She stated that the issue arose during the Cachola case. She stated that there was a news release that went out over the weekend and she was surprised; it didn't feel good because the EC was supposed to know about it prior to the release. After that occurred, she asked the EDLC if there was a policy in place. She stated that in other places that she has worked they have an adopted policy so there is consistency.

Chair Gall stated that it is a good point, and it has been discussed before but he couldn't recall if any policy had been adopted. The EDLC stated that this issue was previously discussed when there was a news release in regard to the Commission's budget. The concern was that the news release sounded like it was coming from the Commission instead of staff. Commissioner Amano asked if there was a distinction between the Commission and the staff. The EDLC stated that he didn't know – he stated that as staff, he couldn't say there was any ethics violations, only the Commission can. The EDLC explained that the Managing Director thought we were airing

dirty laundry in public, but we had given her a copy of the news release and asked her for comments. Chair Gall stated that he thinks that situation underscores the need for a policy.

Commissioner Amano stated that she thought the Commission as a whole should talk about it – what should be in a release, and what should not. The Commission should be the vehicle that decides that. The EDLC stated that the Commission should decide the policy, but not the content of the news release. He stated that if we had to wait for Commission approval for content of the news release, it would make it ineffective because we have to wait thirty days. Commissioner Lilly stated that if you have something that is pressing and needs to be released, you can't have it on an agenda and wait thirty days for approval. But, there is value to sending it to the Commissioners prior to release.

The EDLC apologized to the Commission in regard to the news release for the Cachola case. He stated that the Commission put a ten-day embargo on disclosing the Commission's opinion unless Mr. Cachola disclosed it first. The EDLC continued, prior to the ten-day embargo concluding, Mr. Cachola contacted the media over the weekend. Based on his experience with the media, he was worried that Mr. Cachola's viewpoint would be repeated by other media sources without the Commission's position being reported on. He explained that on Saturday morning, he asked the Legal Clerk to come in and assist him with distribution. He stated that he made the mistake of sending out the news release to the media, but forgot to copy the Commissioners.

Commissioner Amano clarified that the Commission should not be telling staff the content of the news release. She stated that instead, the EC should look at the broad policy, such as the kinds of things that should be released, when, and to whom. Commissioner Amano asked why there was a news release for the Cachola Advisory Opinion as the elaborate opinion should have spoken for itself. The EDLC responded that the media does not read the advisory opinion because they have a fast turn-around. Commissioner Amano then asked why should the EC issue an elaborate advisory opinion if the media is not going to read it. She stated that instead of a news release, the Commission could draft a summary sheet and provide it to the media. The EDLC stated that the news release was a summary. Commissioner Amano disagreed. She stated that the news release is not a summary; it lends itself to the public battles. She stated, "that is not where we do our battles; the documents and records speak for themselves." She continued stating that the prosecutor and defense counsel make their comments on TV, but you do not see the judges making comments on TV even though they are the ones making the decisions.

Vice Chair Chen asked her why she describes a news release as a public battle. Commissioner Amano stated that the Commission has an elaborate opinion and we provide an embargo so the subject can have the chance to prepare for the release. The EDLC stated that if the other side does issue a news release first, then the EC also needs to be able to inform the public of the EC's side as well. Commissioner Amano stated, "that is why the Commission issues the advisory opinion." The EDLC responded that realistically, people are not going to know how to find the opinion on our website; also, it is difficult to get the media to read it. Commissioner Amano stated, "that is what she is referring to – in that people are not reading the opinion, so we are taking the battle to the public so they have their opinion, and then we have to summarize our own written opinion and put it out there too."

Commissioner Silva stated that we are educating the public as to what has transpired – to raise awareness so other people avoid getting into that same situation. He continued that it's an educational tool for everyone concerned.

Commissioner Amano stated that the Commission issues a decision, the decision is public, and that is what we do. Commissioner Silva stated that members of the public do not go down to the courthouse to read all the decisions. Commissioner Lilly stated that the EDLC is like the prosecutor. The EDLC gets the settlement; so when he issues the press release, he summarizes it so that everyone can understand it. He's doing it as an advocate.

Commissioner Amano asked again - when does the staff and Commission separate? She continued, if the EDLC is issuing the news release, he is doing it on behalf of the Commission as well, which is why we should have a PR release policy. She stated that Keith Kaneshiro does not talk for the courts.

The EDLC stated that there is a big difference between an agency and the courts. If a settlement comes into a court, the court would not issue a news release, even if it is newsworthy because it is inappropriate; also, neither of the parties have a duty to inform the public. But the Commission does have a duty. Because the judiciary is so important, it is singularly reviewed. The judiciary is a newsmaker in and of itself. The EDLC further stated that the point of the Commission is to inform people of all spectrums as required in the open records law. It is to show what the Commission is doing, and what public officers and employees are doing whether right or wrong; that is why we need to get the information out.

Commissioner Amano asked what is the status of our investigation in regard to the other councilmembers. The EDLC responded that he would talk about it during executive session. Commissioner Amano further stated that those complaints came up through that whole media discussion. The EDLC responded that it was Mr. Cachola who brought forth the complaints against the other councilmembers. Commissioner Amano stated that Mr. Cachola brought it up, but the EDLC responded to the complaint. The EDLC explained that our policy says that we can respond if someone makes a complaint to the media; and he responded by saying that we will investigate it.

Commissioner Amano further stated that she has made herself clear and this is not the way she likes business to be done. She stated that the EC doesn't fight battles in the public or with the media, and also stated that she agreed with the education piece – which she felt could be accomplished through training. She further stated that maybe there should be a policy that every time the EC issues an advisory opinion the EC needs to issue a summary sheet and a news release regardless of the embargo. She stated that she understands the purposes, but doesn't like the methodology. She further stated that she is not big into fighting in front of the media as nothing gets done there.

Chair Gall made a motion that the EDLC draft a proposed news release policy and to put it on the agenda for the Commission's discussion, adoption, and approval next month. Commissioner Amano seconded the motion. The motion passed unanimously.

C. For Discussion: Ethics Commission Staff Duties During a Contested Case Hearing.

The ALC stated that during the Cachola case, there was some confusion in regard to the filing and distribution of pleadings. Commissioner Amano stated that what was more problematic was determining where documents get filed and retained. Chair Gall stated that since we are a hybrid office, this is a difficult situation. The ALC stated that she had some discussion about a practice to follow with Mr. Kam. In cases where Mr. Kam is counsel and staff is prosecutor, perhaps COR could handle the intake and custody of the documents. Commissioner Amano stated that it was her understanding that this request was made and rejected during the case. Mr. Kam stated that it is one thing for Mr. Kam to have access to the documents; but it is another matter for COR to handle all the intake for the Commission's documents. Mr. Kam stated that he will not accept on behalf of COR to do that. He further stated that it is common for other agencies to have hybrid duties. For example, the Office of Disciplinary Counsel ("ODC") has to prosecute and at the same time intake documents.

Commissioner Amano asked if the ODC has a much larger staff than the EC. Mr. Kam stated that it is approximately double. Commissioner Amano stated that the Commission's small staff precludes us from doing what ODC does. Mr. Kam stated that if the EC wants COR to serve in an administrative capacity in regard to formal proceedings for contested case hearings, that is something to discuss with Ms. Leong.

Chair Gall asked about the ODC's procedures in regard to the hybrid functions. Mr. Kam stated that when the ODC conducts a formal proceeding, documents are filed with the Board. There is a deputy assigned, and staff keeps the board's file. Also, the prosecutor has her own set of files and it all exists in the same office. Mr. Kam further stated that they operate with the same constraints. Mr. Kam also stated that some disciplinary counsel jurisdictions actually have specific counsel assigned to the board and a prosecutorial staff. The EDLC stated that the same exists for the ethics jurisdiction but it is for much larger commissions. Mr. Kam stated that the Commission is the official custodian of the files anyway.

Commissioner Amano stated that the EC staff performing hybrid duties is not practical. The EDLC explained that the ALC had set a practice during the Cachola case where the non-lead attorney directs the clerk in regard to filing and distribution of documents. Commissioner Amano stated that it is not ideal, and we are lucky that the case settled. She further stated that it is not possible to administer cases with the EC's small staff short of assigning the contested case out. She stated that it is the appearance of impropriety that bothers her. She asked about the frequency of contested cases?

The EDLC stated that this was the largest case, but there is about one per year. The ALC stated that in the prior case, they used a hearing officer. The originals were filed with the Commission and were then given to the hearing officer for custody. Commissioner Amano suggested finding out more about this split of duties from the ODC and volunteered to obtain more information.

The EDLC stated that staff would find out more from the ODC. Chair Gall stated that we don't need anything formal, and that the EDLC will look into this and then report back.

The ALC asked if there were any other offices that have this strange hybrid. The EDLC responded, the Hawaii State Ethics Commission. Commissioner Amano asked if the Liquor Commission is in the same situation. Mr. Kam and the EDLC stated that they were not, since they have a staff of 40 and an assigned COR deputy to advise.

Commissioner Amano stated that the Ethics Commission staff is so small it is mind boggling. She further stated that it may come down to adopting a policy that we don't prosecute our own cases and that we hire out or hire hearing officers, which also has to be built into the budget.

Commissioner Silva suggested sending the cases over to the Department of the Prosecuting Attorney ("PAT"). The EDLC responded that PAT is used to dealing with criminal laws and there is a different standard of proof. Commissioner Amano stated that PAT handles the Department of Land and Natural Resources ("DLNR") cases which are violations. The EDLC stated that there are some jurisdictions that have criminalized all ethics law violations.

Commissioner Amano stated that unless the county will commit to doubling the Commission's resources, she doesn't see how we can continue with everything we do: training, adjudicating, prosecuting.

Commissioner Silva remarked that we are creating more work here, and that he believes in keeping it simple. Chair Gall replied that sometimes keeping things simple takes the most work.

Chair Gall stated that it appears that the first part of the memo had been discussed. He asked the ALC to go over the next issue. The ALC asked if the Commissioners wanted to enter into Executive Session, since the rest of the discussion would involve staff providing the EC with legal advice as to the powers and duties of the Commission.

Commissioner Lilly made a motion to enter into Executive Session and that Section C of the Open Session Memo be put in with the executive session memo. All were in favor.

At this time, Mr. Kam got up to leave the room. The EDLC explained that according to the OIP, if Mr. Kam unnecessarily remained in the room, it could be a waiver of attorney-client privilege. Mr. Kam offered that, after discussion, if any Commissioners wanted to talk to him, they could. Mr. Kam left the room.

[The following is a summary of the executive session discussion of Agenda item IV.C.]

After discussion, **Chair Gall made a motion for staff to prepare an analysis on the ability and practicality of the Commission to split the probable cause and adjudicative functions for the next meeting. Commissioner Lilly seconded the motion. The motion passed unanimously.**

V. EXECUTIVE SESSION SUMMARY

Per the Commission's earlier request, the EDLC provided an update on the investigations of the other councilmembers.

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the September 17 and October 27, 2014 Meetings.
(HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

Commissioner Burroughs moved to approve the minutes. Commissioner Silva seconded the motion. The motion passed unanimously.

- B. For Action: Request for a Motion to Approve and Adopt a Formal Advisory Opinion in regard to a City Officer Who has a Personal Conflict of Interest. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

After a brief discussion and recusals, Commissioner Lilly moved to approve the opinion and the redacted opinions. Commissioner Yuen seconded the Motion. The motion passed unanimously.

VI. ADJOURNMENT

Commissioner Lilly moved to exit Executive Session and adjourn the meeting. Commissioner Burroughs seconded the motion. The motion passed unanimously.

The meeting adjourned at approximately 1:30 p.m.

December

NO MEETING